Equality before the Law protected by National Statute.

SPEECHES

OF

HON. CHAS. SUMNER,

OF MASSACHUSETTS,

On his Supplementary Civil Rights Bill,

AS

AN AMENDMENT TO THE CIVIL RIGHTS BILL.

In the Senate, Jan. 15, 17 and 31, Feb. 5, and May 21, 1872.

"Brave Theseus, they were MEN like all before,
And human souls in human frames they bore,
With you to take their parts in earthly feasts,
With you to climb to heaven and sit immortal guests."

Statius, Thebaid, Book XII, v. 565.

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"I was fully convinced that, whatever difference there is between the negro and European in conformation and color, there is none in the genuine sympathies and characteristic feelings of a common nature."—MUNGO PARK, *Travels and Life*, vol. I, p. 80, chap. 5.

"The word man is thought to carry somewhat of dignity in its sound; and we commonly make use of this, as the last and most prevailing argument against a rude insult. "I am not a beast, or dog, but I am a man as well yourself." Since, then, human nature agrees equally to all persons, and since no one can live a sociable life with another who does not own and respect him as a MAN, it follows as a command of the law of nature, that *every man should esteem and treat another as one who is naturally his equal, or one who is a man as well as he.*"—PUFFENDORF, *Law of Nature and Nations*, translated by Kennet, Book III, chap. 2, §1.

"Carrying his solicitude still further, Charlemagne recommended to the bishops and abbots that, in their schools, they should take care to make no difference between the sons of serfs and of freemen, *so that they might come and sit on the same benches to study grammar, music and arithmetic.*"—GUIZOT, *History of France, translated by Black*, vol. 1, p. 239, (ed. Lon., 1872.)

INTRODUCTION.

May 13, 1870. Mr. SUMNER asked, and by unanimous consent obtained, leave to bring in a bill "Supplementary to an act entitled 'An act to protect all citizens of the United States in their civil rights, and to furnish means for their vindication,' passed April 9, 1866," which was read the first and second times by unanimous consent, referred to the Committee on the Judiciary, and ordered to be printed.

July 7. Only a few days before the close of the session, Mr. Trumbull, chairman of the Committee on the Judiciary, reported a bundle of bills, including that above mentioned, adversely, and all, on his motion, were postponed indefinitely.

January 20, 1871. Mr. SUMNER again introduced the same bill, which was once more referred to the Committee on the Judiciary.

February 15, 1871. Mr. TRUMBULL, from the Committee, again reported the bill adversely; but at the suggestion of Mr. Sumner, it was allowed to go on the calendar. Owing to the pressure of business in the latter days of the session, he was not able to have it considered, and the bill dropt with the session.

At the opening of the next Congress, March 9, 1871. Mr. SUMNER again brought forward the same bill, which was read the first and second times, by unanimous consent, and on his motion ordered to lie on the table and be printed. In making this motion he said that the bill had been reported adversely twice by the Committee on the Judiciary; that, therefore, he did not think it advisable to ask its reference again; that nothing more important could be submitted to the Senate, and that it should be acted on before any adjournment of Congress. In reply to an inquiry from Mr. Hamlin, of Maine, Mr. Sumner proceeded to explain the bill, which he insisted was in conformity with the Declaration of Independence, and with the National Constitution, neither of which knows anything of the word "white." Then announcing that he should do what he could to press the bill to a vote, he said: "Senators may vote it down. They may take that responsibility, but I shall take mine, God willing."

At this session a resolution was adopted limiting legislation to certain enumerated subjects, among which the Civil Rigots bill was not named. March 17, while the resolution was under discussion, Mr. Sumner warmly protested against it, and insisted that nothing should be done to prevent the consideration of his bill, which he explained at length. In reply to the objection that the session was to be short, and that there was no time, he said: "Make the time, then; extend the session; do not limit it so as to prevent action on a measure of such vast importance." An amendment moved by Mr. Sumner to add the Civil Rights bill to the enumerated subjects was rejected. The session closed without action upon it.

At the opening of the next session, Mr. Sumner renewed his efforts.

December 7, 1871. In presenting a petition from colored citizens of Albany, he remarked: "It seems to me the Senate cannot do better than proceed at once to the consideration of the supplementary bill now on our calendar, to carry out the prayer of these petitioners;" and he wished Congress might be inspired "to make a Christmas present to their colored fellow-citizens of the rights secured by that bill."

December 20. The Senate having under consideration a bill which had already passed the House, "for the removal of legal and political disabilities imposed by the third section of the fourteenth article of amendment to the Constitution of the United States." Mr. Sumner, insisting upon justice before generosity, moved his Supplementary Civil Rights bill as an amendment. A colloquy took place between himself and Mr. Hill, of Georgia, in which the latter opposed the amendment.

Mr. SUMNER. I should like to bring home to the Senator that nearly one-half of the people of Georgia are now excluded from the equal rights which my amendment

proposes to secure; and yet I understand that the Senator disregards their condition, sets aside their desires, and proposes to vote down my proposition. The Senator assumes that the former rebels are the only people of Georgia. Sir, I see the colored race in Georgia. I see that race once enslaved, for a long time deprived of all rights, and now under existing usage and practice despoiled of rights which the Senator himself is in the full enjoyment of.

Mr. HILL. * * I never can agree in the proposition if there be a hotel for the entertainment of travelers, and two classes stop at it, and there is one dining-room for one class and one for another, served alike in all respect, with the same accommodation, the same attention to the guest, there is anything offensive or anything that denies the civil rights of one more than the other. Nor do I hold that if you have public schools, and you give all the advantages of education to one class as you do to another, but keep them separate and apart, there is any denial of a civil right in that. I also contend that even upon the railways of the country, if cars of equal comfort, convenience, and security be provided for different classes of persons, no one has a right to complain if it be a regulation of the companies to separate them * * *

Mr. SUMNER. Mr. President, we have a vindication on this floor of inequality as a principle and as a political rule.

Mr. HILL. On which race, I would inquire, does the inequality to which the Senator refers operate?

Mr. SUMNER. On both. Why, the Senator would not allow a white man in the same car with a colored man.

Mr. HILL. Not unless he was invited, perhaps. [Laughter.]

Mr. SUMNER. The Senator mistakes a substitute for equality. Equality is where all are alike. A substitute can never take the place of equality. It is impossible; it is absurd. I must remind the Senator that it is very unjust; it is terribly unjust. We have received in this Chamber a colored Senator from Mississippi; but according to the rule of the Senator from Georgia we should have put him apart by himself; he should not have sat with his brother Senators. Do I understand the Senator as favoring such a rule?

Mr. HILL. No, sir.

Mr. SUMNER. The Senator does not.

Mr. HILL. I do not, sir, for this reason: it is under the institutions of the country that he becomes entitled by law to his seat here; we have no right to deny it to him.

Mr. SUMNER. Very well; and I intend to the best of my ability to see that under the institutions of the country he is equal everywhere. The Senator says he is equal in this Chamber. I say he should be equal in rights everywhere; and why not, I ask the Senator from Georgia?

Mr. HILL. * * * I am one of those who have believed that when it pleased the Creator of heaven and earth to make different races of men it was His purpose to keep them distinct and separate. I think so now.

Mr. SUMNER. The Senator admits that in the highest council Chamber there is, and should be, perfect equality before the law; but descend into the hotel, on the railroad, within the common school, and there can be no equality before the law. The Senator does not complain because all are equal in this Chamber. I should like to ask him, if he will allow me, whether, in his judgment, the colored Representatives from Georgia and South Corolina in the other Chamber ought not on railroads and at hotels to have like rights with himself? I ask that precise question.

Mr. HILL. I will answer that question in this manner: I myself am subject in hotels and upon railroads to the regulations provided by the hotel proprietors for their guests, and by the railroad companies for their passengers. I am entitled, and so is the colored man, to all the security and comfort that either presents to the most favored guest or passenger; but I maintain that proximity to a colored man does not increase my comfort or security, nor does proximity to me on his part increase his and therefore it is not a denial of any right in either case.

Mr. SUMNER. May I ask the Senator if he is excluded from any right on account of his color? The Senator says he is sometimes excluded from something at hotels or on railroads. I ask whether any exclusion on occount of color, bear on him?

Mr. HILL. I answer the Senator. I have been excluded from ladies' cars on railroads. I do not know on what account precisely; I do not know whether it was on account of my color; but I think it more likely that it was on account of my sex. [Laughter.]

Mr. SUMNER. But the Senator, as I understand, insists that it is proper on account of color. That is his conclusion.

Mr. HILL. No; I insist that it is no denial of a right, provided all the comfort and security be furnished to passengers alike.

Mr. SUMNER. The Senator does not seem to see that any rule excluding a man on account of color is an indignity, an insult, and a wrong; and he makes himself on this floor the representative of indignity, of insult, and of wrong to the colored race. Why, sir, his State has a large colored population, and he denies their rights.

Mr. HILL. If the Senator will allow me, I will say to him that it will take him and others, if there should be any others who so believe, a good while to convince the colored people of the State of Georgia who know me, that I would deprive them of any right to which they are entitled, though it were only technical; but in matters of pure taste I cannot get away from the idea that I do them no injustice if I separate them on some occasions from the other race. * * * *

Mr. SUMNER. The Senator makes a mistake which has been made for a generation in this Chamber, confounding what belongs to society with what belongs to rights. There is no question of society. The Senator may choose his associates as he pleases. They may be white or black, or between the two. That is simply a social question, and nobody would interfere with it. The taste which the Senator announces he will have free liberty to exercise, selecting always his companions; but when it comes to rights, there the Senator must obey the law, and I insist that by the law of the land all persons without distinction of color shall be equal in rights. Show me, therefore, a legal institution, anything created or regulated by law, and I show you what must be opened equally to all without distinction of color. Notoriously, the hotel is a legal institution, originally established by the common law, subject to minute provisions and regulations; notoriously, public conveyances are common carriers subject to a law of their own; notoriously, schools are public institutions created and maintained by law; and now I simply insist that in the enjoyment of these institutions there shall be no exclusion on account of color.

Mr. HILL. * * * I must confess, sir, that I cannot see the magnitude of this subject. I object to this great Government descending to the business of regulating the hotels and the common taverns of this country, and the street railroads, stage-coaches, and everything of that sort. It looks to me to be a petty business. * * *

Mr. SUMNER. I would not have my country descend; but ascend. It must rise to the heights of the Declaration of Independence. Then and there did we pledge ourselves to the great truth that all men are equal in rights. And now a Ssnator from Georgia rises on this floor and denies it. He denies it by a subtlety. While pretending to admit it, he would overthrow it. He would adopt a substitute for equality. * * *

Mr. HILL. With the permission of the Senator, I will ask him if this proposition does not involve on the part of this Government an inhibition upon railroad companies of first, second, and third class cars?

Mr. SUMNER. Not at all. That is simply a matter of price. My bill is an inhibition upon inequality founded upon color. I had thought that all those inequalities were buried under the tree at Appomattox, but the Senator digs them up and brings them into this Chamber. There never can be an end to this discussion until all men are assured in equal rights.

Mr. HILL. * * * I do not know that among the guests that the Senator entertains of the colored race, he is visited so often by the humble as I myself am. I think those who call upon him are gentlemen of title and of some distinction; they may be Lieutenant Governors, members of the two Houses here, members of State Legislatures, &c. My associations have been more with the lower strata of the colored people than with the upper.

Mr. SUMNER. Mr. President, there is no personal question between the Senator and myself——

Mr. HILL. None whatever.

Mr. SUMNER. He proclaims his relations with the colored race. I say nothing of mine; I leave that to others. But the Senator still insists upon his dogma of inequality. Senators have heard him again and again how he comes round by a vicious circle to the same point, that an equivalent is equality; and when I mention the case of Governor Dunn travelling from New Orleans to Washington on public business, I understand the Senator to say that on the cars he should enjoy a different treatment from the Governor.

Mr. HILL. No, sir; I have distinctly disclaimed that. When he pays his money, he is entitled to as much comfort and as much convenience as I am.

Mr. SUMNER. Let me ask the Senator whether in this world personal respect is not an element of comfort! If a person is treated with indignity, can he be comfortable?

Mr. HILL. I will answer the Senator that no one can condemn more strongly than I do any indignity visited upon a person merely because of color.

Mr. SUMNER. But when you exclude persons from the comforts of travel simply on account of color, do you not offer them an indignity?

Mr. HILL. I say it is the fault of the railroad companies if they do not provide comforts for all their passengers and make them equal where they pay equal fare.

Mr. SUMNER. The Senator says it is the fault of the railroad company. I propose to make it impossible for the railroad company to offer an indignity to a colored man more than to the Senator from Georgia.

Mr. HILL Right there the Senator and I divide upon this question. I confess to having a little *penchant* for the white race, and if I were going on a long journey, and desired a companion, I should prefer to select him from my own race.

Mr. SUMNER. The Senator comes round again to his taste. It is not according to his taste; and therefore offers an indignity to the colored man.

Mr. HILL. No, sir.

Mr. SUMNER. It is not according to his taste; that is all. How often shall I say that this is no question of taste; it is no question of society; it is a stern, austere, hard question of rights. And that is the way that I present it to the Senate * * *

In old days, when slavery was arraigned, the constant inquiry of those who represented this wrong was, "Are you willing to associate with colored persons; will you take these slaves, as equals, into your families?" Sir, was there ever a more illogical inquiry? What has that to do with the question? A claim of rights cannot be encountered by any social point. I may have whom I please as friend, acquaintance, associate, and so may the senator; but I cannot deny any human being, the humblest any right of equality. He must be equal with me before the law or the promises of the Declaration of Independence are not yet fulfilled.

And now, sir, I pledge myself, so long as strength remains in me, to press this question to a successful end. I will not see the colored race of this Republic treated with indignity on grounds assigned by the Senator. I am their defender. The Senator may deride me, and may represent me as giving too much time to what he calls a very small question. Sir, no question of human rights is small. Every question by which the equal rights of all are effected is trancendent. It cannot be magnified. But here are the rights of a whole people, not merely the rights of an individual of two or three or four, but the rights of a race, recognized as citizens, voting, helping to place the Senator here in this Chamber, and he turns upon them and denies them.

Mr. HILL. The Senator is not aware of one fact, * * * that every colored member of the Legislature of my State, even though some of them had made voluntary pledges to me voted against my election to this body. I was not sent here receiving a single vote from that class of men in the Legislature.

Mr. SUMNER. I am afraid that they understood the Senator. [Laughter.]

Mr. HILL. That may be, sir; I would not be suprised if they had some distrust. [Laughter.]

Mr. SUMNER. And now, Mr. President, that we may understand precisely where we are, that the Senate need not be confused by the question of taste, or the question of society presented by the Senator from Georgia, I desire to have my amendment read.

The Civil Rights Bill was then read at length.

December 21. Mr. THURMAN, of Ohio, objected to the amendment of Mr. Sumner on the ground that "being a measure, which, if it stood by itself could be passed by a majority vote of the Senate, cannot be offered to a bill that requires two-thirds of the Senate." The objection being overruled, Mr. Thurman appealed from "the decree of the chair," a debate ensued on the question of order, Mr. Thurman, Mr. Bayard, of Delaware, Mr. Trumbull, of Illinois; Mr. Davis, of Kentucky, and Mr. Sawyer sustained the objection. Mr. Conkling, of New York; Mr. Carpenter, of Wisconsin; Mr. Edmunds, of Vermont, and Mr. Sumner opposed it. In the course of his speech Mr. Sumner remarked:

"Does not the act before us in its body propose a measure of reconciliation? Clemency and amnesty it proposes, and these, in my judgment, constitute a measure of reconciliation. And now I add, justice to the colored race. Is not that germane? Do not the two go together? Are they not natually associated? Sir, can they be separated?

Instead of raising a question of order, I think the friends of amnesty would be much better employed if they devoted their strength to secure the passage of my amendment. Who that is truly in favor of amnesty will vote against this measure of reconciliation?

Sir, most anxiously do I seek reconciliation; but I know too much of history, too much of my own country, and I remember too well the fires over which we have walked in these latter days, not to know that reconciliation is impossible except on the recognition of Equal Rights. Vain is the effort of the Senator from Mississippi, [Mr. Alcorn;] he cannot succeed; he must fail, and he ought to fail. It is not enough to be generous; he must learn to be just. It is not enough to stand by those who have fought against us; he must also stand by those who for generations have borne the ban of wrong. I listened with sadness to the Senator; he spoke earnestly and sincerely; but to my mind, it is much to be regretted that coming into this Chamber the representative of colored men, he should turn against them. I know that he will say, "Pass the amnesty bill first and then take care of the other." I say better pass the two together, or if either is lost, let it be the first. Justice in this world is foremost.

The Senator thinks that the cause of the colored race is hazarded because my amendment is moved on the act for amnesty. In my judgment, it is advanced. He says that the act of amnesty can pass only by a two-thirds vote. Well, sir, I insist that every one of that two-thirds should record his name for my measure of reconciliation. If he does not he is inconsistent with himself. How, sir, will an act of amnesty be received when accompanied with denial of justice to the colored race? With what countenance can it be presented to this country? How will it look to the civilized world? Sad page! The recording angel will have tears, but not enough to blot it out."

The decision of the Chair was sustained by the vote of the Senate, yeas 28, nays 26, and the amendment was declared in order. On the question of its adoption it was lost; yeas 29, nays 30.

The amnesty bill was then reported to the Senate, when Mr. Sumner renewed his amendment. In the debate that ensued he declared his desire to vote for amnesty, but he insisted that this measure did not deserve success unless with it was justice to the colored race. In reply to Mr. Thurman he urged that all regulations of public institutions should be in conformity with the Declaration of Independence. "The Senator may smile, but I commend that to his thoughts during our vacation. Let him consider the binding character of the Declaration in its fundamental principles. The Senator does not believe it. There are others who do, and my bill is simply a practical application of it."

Without taking any vote the Senate adjourned for the holiday recess, leaving the amnesty bill and the pending amendment as unfinished business.

January 15, 1872. The subject was resumed, when Mr. Sumner made the following speech.

SPEECH.

MR. PRESIDENT: In opening this question, one of the greatest ever presented to the Senate, I have had but one hesitation, and that is, merely with regard to the order of treatment. There is a mass of important testimony from all parts of the country, from Massachusetts as well as Georgia, showing the absolute necessity of congressional legislation for the protection of equal rights, which I think ought to be laid before the Senate. It was my purpose to begin with this testimony; but I have changed my mind, and shall devote the day to a statement of the question, relying upon the indulgence of the Senate for another opportunity to introduce the evidence. I ask that the pending amendment be read.

[The Chief Clerk read the amendment: which was to add as additional sections the Supplementary Civil Rights bill.]

Mr. SUMNER resumed. Mr. President, slavery, in its foremost pretensions, reappears in the present debate. Again the barbarous tyranny stalks into this Chamber, denying to a whole race the equal rights promised by a just citizenship. Some have thought slavery dead. This is a mistake. If not in body, at least in spirit or as a ghost making the country hideous, the ancient criminal yet lingers among us, insisting upon the continued degradation of a race.

Property in man has ceased to exist. The human auction-block has departed. No human being can call himself master, with impious power to separate husband and wife, to sell child from parent, to shut out the opportunities of religion, to close the gates of knowledge and to rob another of his labor and all its fruits. These guilty prerogatives are ended. To this extent the slave is free. No longer a chattel, he is a man,—justly entitled to all that is accorded by law to any other man.

Such is the irresistible logic of his emancipation. Ceasing to be a slave, he became a man, whose foremost right is Equality of Rights. And yet slavery has been strong enough to postpone his entry into the great possession. Cruelly he was not permitted to testify in court; most unjustly he was not allowed to vote. More than four millions of people, whose only offense was a skin once the badge of slavery, were shut out from the court-room, and also from the ballot-box, in open defiance of the great promises of our fathers that all men are equal in rights, and that just government stands only on the consent of the governed. Such was the impudent behest of slavery, prolonged after it was reported dead. At last these crying wrongs are overturned. The slave testifies; the slave votes. To this extent his equality is recognized.

EQUALITY BEFORE THE LAW.

But this is not enough. Much as it may seem compared with the past, when all was denied, it is too little, because all is not yet recognized. The denial of any right is a wrong darkening the enjoyment of all the rest. Besides the right to testify and the right to vote, there are other rights without which Equality does not exist. The precise rule is Equality before the Law; nor more nor less; that is, that condition before the Law in which all are alike—being entitled without discrimination to the equal enjoyment of all institutions, privileges, advantages, and conveniences created or regulated by law, among which are the right to testify and the right to vote. But this plain requirement is not satisfied, logically or reasonably, by these two concessions, so that when they are recognized all others are trifles. The court-house and the ballot-box are not the only places for the rule. These two are not the only institutions for its operation. The rule is general; how then restrict it to two cases? It is, all are equal before the law—not merely before the law in two cases, but before the law in all cases without limitation or exception. Important as it is to testify and to vote, life is not all contained even in these possessions.

The new made citizen is called to travel for business, for health, or for pleasure; but here his trials begin. His money, whether gold or paper, is the same as the white man's; but the doors of the public hotel, which from the earliest days of jurisprudence have always opened hospitably to the stranger, close against him, and the public conveyances which the common law declares equally free to all alike, have no such freedom for him. He longs, perhaps, for respite and relaxation at some place of public amusement, duly licensed by law, and here also the same adverse discrimination is made. With the anxieties of a parent, seeking the welfare of his child, he strives to bestow upon him the inestimable blessings of education, and takes him affectionately to the common school, created by law and supported by the taxation to which he has contributed, but these doors slam rudely in the face of the child where is garnered up the parent's heart. "Suffer little children, and forbid them not, to come unto me;" such were the words of the divine Master. But among us little children are turned away and forbidden at the door of the common school, because of the skin. And the same insulting ostracism shows itself in other institutions of science and learning, also in the church and in the last resting place on earth.

Two instances occur, which have been mentioned already on this floor; but their eminence in illustration of an unquestionable grievance justifies the repetition.

CASE OF FREDERICK DOUGLASS.

One is the well-known case of Frederick Douglass, who, returning home after earnest service of weeks as secretary of the com-

mission to report on the people of St. Domingo and the expediency of incorporating them with the United States, was rudely excluded from the table, where his brother commissioners were already seated on board the mail steamer of the Potomac, just before reaching the President, whose commission he bore. This case, if not aggravated, is made conspicuous by peculiar circumstances. Mr. Douglass is a gentleman of unquestioned ability and character, remarkable as an orator, refined in manners and personally agreeable. He was returning, charged with the mission of bringing under our institutions a considerable population of colored foreigners, whose prospective treatment among us was forshadowed on board that mail steamer. The Dominican Baez could not expect more than our fellow-citizen. And yet, with this mission, and with the personal recommendation he so justly enjoys, this returning secretary could not be saved from outrage even in sight of the Executive Mansion.

CASE OF LIEUTENANT GOVERNOR DUNN.

There also was Oscar James Dunn, late Lieutenant Governor of Louisiana. It was my privilege to open the door of the Senate Chamber and introduce him upon this floor. Then in reply to my inquiry he recounted the hardships to which he had been exposed in the long journey from Louisiana, especially how he was denied the ordinary accommodations for comfort and repose supplied to those of another skin. This denial is memorable, not only from the rank but the character of the victim. Of blameless life, he was an example of integrity. He was poor, but could not be bought or bribed. Duty with him was more than riches. A fortune was offered for his signature; but he spurned the temptation.

And yet this model character, high in the confidence of his fellow-citizens and in the full enjoyment of political power, was doomed to suffer the blasting influence which still finds support in this Chamber. He is dead at last and buried with official pomp. The people, counted by tens of thousands, thronged the streets while his obsequies proceeded. An odious discrimination was for the time suspended. In life rejected by the conductor of a railway because of his skin, he was borne to his last resting-place with all the honors an afflicted community could bestow. Only in his coffin was the ban of color lifted and the dead statesman admitted to that equality which is the right of all.

REQUIREMENT OF REPUBLICAN INSTITUTIONS.

These are marked instances; but they are types. If Frederick Douglass and Oscar James Dunn could be made to suffer, how much must others be called to endure. All alike, the feeble, the invalid, the educated, the refined, women as well as men, are shut out from the ordinary privileges of the steamboat or rail-car, and

driven into a vulgar sty with smokers and rude persons, where the conversation is as offensive as the scene, and then again at the roadside inn are denied that shelter and nourishment without which travel is impossible. Do you doubt this constant, wide spread outrage, extending in uncounted ramifications throughout the whole land? With sorrow be it said, it reaches everywhere, even into Massachusetts. Not a State which does not need the benign correction. The evidence is on your table in numerous petitions. And there is other evidence, already presented by me, showing how individuals have suffered from this plain denial of equal rights. Who that has a heart can listen to the story without indignation and shame? Who with a spark of justice to illumine his soul can hesitate to denounce the wrong? Who that rejoices in republican institutions will not help to overthrow the tyranny by which they are degraded?

I do not use too strong language when I expose this tyranny as a degradation to republican institutions; ay, sir, in its fundamental axiom. Why is the Declaration of Independence our Magna Charta? Not because it declares separation from a distant kingly power; but because it announces the lofty truth that all are equal in rights, and as a natural consequence that just government stands only on the consent of the governed,—all of which is held to be self evident. Such is the soul of republican institutions, without which the Republic is a failure, a mere name and nothing more. Call it a Republic if you will, but it is in reality a soulless mockery.

Equality in rights is not only the first of rights; it is an axiom of political truth. But an axiom, whether of science or philosophy, is universal and without exception or limitation; and this is according to the very law of its nature. Therefore, it is no axiom to announce grandly that all white men are equal in rights, nor is it an axiom to announce with the same grandeur that all persons are equal in rights, but colored persons have no rights except to testify and vote. Nor is it a self-evident truth, as declared, for no truth is self-evident which is not universal. The asserted limitation destroys the original Declaration, making it a ridiculous sham, instead of that sublime Magna Charta before which kings, nobles, and all inequalities of birth must disappear as ghosts of night at the dawn.

REAL ISSUE OF THE WAR.

All this has additional force when it is known that this very axiom and self-evident truth declared by our fathers was the real issue of the war, and was so publicly announced by the leaders on both sides. Behind the embattled armies were ideas, and the idea on our side was Equality in rights, which on the other side was denied. The Nation insisted that all men are created equal; the

Rebellion insisted that all men are created unequal.' Here the evidence is explicit.

The inequality of men was an original postulate of Mr. Calhoun, which found final expression in the open denunciation of the self-evident truth as a "self-evident lie." Echoing this denunciation Jefferson Davis, on leaving the Senate, January 21, 1651, in that farewell speech which some among you heard, but which all may read in the Globe, made the issue in these words:

"It has been a belief that we are to be deprived in the Union of the rights which our fathers bequeathed to us, which has brought Mississippi into her present decision. *She has heard proclaimed the theory that all men are created free and equal, and this made the basis for attack upon her social institutions; and the sacred Declaration of Independence has been invoked to maintain the position of the equality of the races.*" [*—Congressional Globe, p.* 487, *Thirty-Sixth Congress, second session.*]

The issue thus made by the chief rebel was promptly joined. Abraham Lincoln, the elected President, stopping at Independence Hall, February 22, on his way to assume his duties at the National capital, in unpremeditated words, thus interpretated the Declaration:

"It was that which gave promise that in our time the weight should be lifted from the shoulders of all men, and *that all should have an equal chance.*"

Mark, if you please, the simplicity of this utterance. All are to have "an equal chance," and this he said "is the sentiment embodied in the Declaration of Independence." Then, in reply to Jefferson Davis, he proceeded:

"Now, my friends, can this country be saved on this basis? If it can I shall consider myself one of the happiest men in the world if I can help save it. If it cannot be saved upon that principle, it will be truly awful. But if this country cannot be saved without giving up that principle, I was about to say I would rather be assassinated on the spot."

Giving these words still further solemnity, he added:

"I have said nothing but what I am willing to live by, and, if it be the pleasure of Almighty God, to die by."

And then before raising the national banner over the historic Hall, he said:

"It is on such an occasion as this that we can reason together, and reaffirm our devotion to the country and the principles of the Declaration of Independence."

Thus the guantlet flung down by Jefferson Davis was taken up by Abraham Lincoln, who never forgot the issue.

The rejoinder was made by Alexander H. Stevens, Vice President of the Rebellion, in a not-to-be forgotten speech at Savannah, March 21, 1861, when he did not hesitate to declare of the pretended government that "its foundations are laid, its corner-stone rests upon *the great truth that the Negro is not equal to the white man.*" Then glorying in this terrible shame he added: "This, our new Government, is the first in the history of the world based upon the great physi-

cal, philosophical and moral truth." "This stone which was rejected by the first builders is become the chief stone of the corner."

To this unblushing avowal Abraham Lincoln replied in that marvelous, undying utterance at Gettysburg, fit voice for the Republic, greater far than any victory :

"Four score and seven years ago our fathers brought forth upon this continent a new nation, *conceived in Liberty and dedicated to the proposition that all men are created equal.*"

Thus, in precise conformity with the Declaration, was it announced that our Republic is dedicated to the Equal Rights of all, and then the prophet-President, soon to be a martyr, asked his countrymen to dedicate themselves to the great task remaining, highly resolving "that this nation under God shall have a new birth of Freedom, and that government of the people, by the people and for the people, shall not perish from the earth."

The victory of the war is vain without the grander victory through which the Republic is dedicated to the axiomatic, self-evident truth declared by our fathers, and asserted by Abraham Lincoln. With this mighty truth as a guiding principle, the National Constitution is elevated, and made more than ever a protection to the citizen.

All this is so plain that it is difficult to argue it. What is the Republic if it fails in this loyalty? What is the National Government, co-extensive with the Republic, if fellow-citizens, counted by the million, can be shut out from equal rights in travel, in recreation, in education, and in other things, all contributing to human necessities. Where is that great promise by which the "pursuit of happiness" is placed with life and liberty under the safeguard of axiomatic self-evident truth? Where is justice if this ban of color is not promptly removed? Where is humanity? Where is reason?

TWO EXCUSES.

The two excuses show how irrational and utterly groundless is this pretension. They are on a par with the pretension itself. One is that the question is of society and not of rights, which is clearly a misrepresentation; and the other is that the separate arrangements provided for colored persons constitute a substitute for equality in the nature of an equivalent; all of which is clearly a contrivance, if not a trick, as if there could be any equivalent for equality.

NO QUESTION OF SOCIETY.

Of the first excuse it is difficult to speak with patience. It is a simple misrepresentation, and wherever it shows itself must be treated as such. There is no colored person who does not resent the imputation that he is seeking to intrude himself socially any-

where. This is no question of society; no question of social life; no question of social equality, if anybody knows what this means. The object is simply Equality before the Law, a term which explains itself. Now, as the law does not presume to create or regulate social relations, these are in no respect affected by the pending measure. Each person, whether Senator or citizen, is always free to choose who shall be his friend, his associate, his guest. And does not the ancient proverb declare that a man is known by the company he keeps? But this assumes that he may choose for himself. His house is his "castle;" and this very designation, borrowed from the common law, shows his absolute independence within its walls; nor is there any difference, whether it be palace or hovel; but when he leaves his "castle" and goes abroad, this independence is at an end. He walks the streets, but always subject to the prevailing law of Equality; nor can he appropriate the sidewalk to his own exclusive use, driving into the gutter all whose skin is less white than his own. But nobody pretends that Equality in the highway, whether on pavement or sidewalk, is a question of society. And, permit me to say, that Equality in all institutions created or regulated by law, is as little a question of society.

In the days of Slavery it was an oft-repeated charge, that Emancipation was a measure of social equality, and the same charge became a cry at the successive efforts for the right to testify and the right to vote. At each stage the cry was raised, and now it makes itself heard again, as you are called to assure this crowning safeguard.

EQUALITY NOT FOUND IN EQUIVALENTS.

Then comes the other excuse, which finds Equality in separation. Separate hotels, separate conveyances, separate theaters, separate schools, separate institutions of learning and science, separate churches, and separate cemeteries—these are the artificial substitutes; and this is the contrivance by which a transcendent right, involving a transcendent duty, is evaded: for Equality is not only a right but a duty.

How vain to argue that there is no denial of Equal Rights when this separation is enforced. The substitute is invariably an inferior article. Does any Senator deny it?—Therefore, it is not Equality. At best it is an equivalent only; but no equivalent is Equality. Separation implies one thing for a white person and another thing for a colored person; but Equality is where all have the same alike. There can be no substitute for Equality; nothing but itself. Even if accommodations are the same, as notoriously they are not, there is no Equality. In the process of substitution the vital elixir exhales and escapes. It is lost and cannot be recovered; for Equality is found only in Equality. "Nought but itself can be parallel;" but Senators undertake to find parallels in other things.

As well make weight in silver the equivalent for weight in diamonds, according to the illustration of Selden in his famous Table Talk. "If," remarked the learned interlocutor, "I said I owed you twenty pounds in silver, and you said I owed you twenty pounds of diamonds,* which is a sum innumerable, 'tis impossible we should ever agree." But equality is weight in diamonds and a sum innumerable which is very different from weight in silver.

Assuming, what is most absurd to assume, and what is contradicted by all experience, that a substitute can be an equivalent, it is so in form only and not in reality. Every such attempt is an indignity to the colored race, instinct with the spirit of slavery, and this decides its character. It is slavery in its last appearance. Are you ready to prolong the hateful tyranny? Religion and reason condemn Caste as impious and unchristian, making republican institutions and equal laws impossible; but here is Caste not unlike that which separates the Sudra from the Brahmin. Pray, sir, who constitutes the white man a Brahmin? Whence his lordly title? Down to a recent period in Europe the Jews were driven to herd by themselves separate from the Christians; but this discarded barbarism is revived among us in the ban of color. There are millions of fellow-citizens guilty of no offence except the dusky livery of the sun appointed by the heavenly Father, whom you treat as others have treated the Jews, as the Brahmin treats the Sudra. But, pray, sir, do not pretend that this is the great equality promised by our fathers.

In arraigning this attempt at separation as a Caste, I say nothing new. For years I have denounced it as such, and here I followed good authorities, as well as reason. Alexander Von Humboldt, speaking of negroes of New Mexico when slavery prevailed, called them a Caste. A recent political and juridical writer of France uses the same term to denote not only the discrimination in India, but that in our own country, especially referring to the exclusion of colored children from the common schools as among "the humiliating and brutal distinctions" by which their Caste is characterized.† The principle of separation on the ground of hereditary inferiority is the distinctive essence of Caste; but this is the outrage which flaunts in our country, crying out, "I am better than thou, because I am white. Get away!"

THE REMEDY.

Thus do I reject the two excuses. But I do not leave the cause here. I go further and show how consistent is the pending measure with acknowledged principles, illustrated by undoubted law.

The bill for equal rights is simply supplementary to the existing Civil Rights Law, which is one of our great statutes of peace,

* Table Talk, the King, p. 102.

† Charles Comte, Traité de Législation, Tome IV., pp. 129, 445.

and it stands on the same requirements of the National Constitution. If the Civil Rights Law is above question, as cannot be doubted, then also is this supplementary amendment, for it is only the complement of the other, and necessary to its completion. Without this amendment the original law is imperfect. It cannot be said, according to its title, that all persons are protected in their civil rights, so long as the outrages I expose continue to exist; nor is slavery entirely dead.

Following reason and authority the conclusion is easy. A law dictionary, of constant use as a repertory of established rules and principles, defines a "freeman," as "one in the possession of *the civil rights* enjoyed by the people generally." * Happily all are freemen now; but the colored people are still excluded from civil rights enjoyed by the people generally, and this too in face of our new bill of rights intended for their especial protection.

By the Constitutional amendment abolishing slavery, Congress is empowed "to enforce this article by appropriate legislation;" and in pursuance thereof the Civil Rights Law was enacted. That measure was justly accepted as "appropriate legislation." Without it, Slavery would still exist in at least one of its most odious pretensions. By the Civil Rights Law, colored persons were assured in the right to testify, which in most of the States was denied or abridged. So closely was this outrage connected with Slavery, that it was indeed part of this great wrong. Therefore its prohibition was "appropriate legislation" in the enforcement of the Constitutional amendment. But the denial or abridgment of Equality on account of color is also part of Slavery. So long as it exists, Slavery is still present among us. Its prohibition is not only "appropriate" but necessary to enforce the Constitutional amendment. Therefore, is it strictly Constitutional, as if in the very text of the National Constitution.

The next Constitutional amendment, known as the Fourteenth, contains two different provisions, which augment the power of Congress. The first furnishes the definition of "citizen," which down to this time had been left to construction only.

"*All persons* born or natualized in the United States and subject to the jurisdiction thereof, are *citizens* of the United States and of the States wherever they reside."

Here, you will remark, are no words of race or color. "*All* persons" and not "*all white* persons," born or naturalized in the United States and subject to the jurisdiction thereof, are "citizens." Such is the definition supplied by this amendment. This is followed by another provision in aid of the definition:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, *nor deny to any person within its jurisdiction the equal protection of the laws.*

* Bouvier.

And Congress is empowered to enforce this definition of citizenship and this guarantee by "appropriate legislation."

Here, then, are two Constitutional amendments, each a fountain of power, the first to enforce the abolition of slavery, and the second to assure the privileges and immunities of citizens, and also the equal protection of the laws. If the Supplementary Civil Rights bill, moved by me, is not within these accumulated powers, I am at a loss to know what is within those powers.

In considering these constitutional provisions, I insist upon that interpretation which shall give them the most generous expansion, so that they shall be truly efficacious for human rights. Once slavery was the animating principle in determining the meaning of the National Constitution; happily it is so no longer. Another principle is now supreme, breathing into the whole the breath of a new life, and filling it in every part with one pervading, controlling sentiment, being that great principle of Equality, which triumphed, at last, on the battle-field, and bearing the watchword of the Republic now supplies the rule by which every word of the Constitution and all its parts must be interpreted, as much as if written in its text.

There is also an original provision of the National Constitution not to be forgotten.

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Once a sterile letter, this is now a fruitful safeguard to be interpreted, like all else, so that human rights shall most prevail. The term "privileges and immunities" was, at an early day, authoritatively defined by Judge Washington, who announced that they embraced, "protection by the Government: the enjoyment of life and liberty, with the right to acquire and possess property of every kind and *to pursue and obtain happiness and safety*; * * the right of a citizen of one State to pass through or to reside in any other State for purposes of trade, agriculture, professional pursuits, or otherwise."* But these "privileges and immunities" are protected by the present measure.

No doubt the supplementary law must operate, not only in national jurisdiction, but also in the States, precisely as the Civil Rights law. Otherwise it will be of little value. Its sphere must be coextensive with the Republic, making the rights of the citizen uniform everywhere. But this can be only by one uniform safeguard sustained by the nation. Citizenship is universal, and the same everywhere. It cannot be more or less in one State than in another.

But legislation is not enough. An enlightened public opinion must be invoked. Nor will this be wanting. The country will rally in aid of the law, more especially since it is a measure of justice

* Corfield v. Coryell, 4 Washington, C. R., 380.

and humanity. The law is needed now as a help to public opinion. It is needed by the very people whose present conduct makes occasion for it. Prompted by the law, leaning on the law, they will recognize the equal rights of all; nor do I despair of a public opinion, which shall stamp the denial of these rights as an outrage not unlike slavery itself. Custom and patronage will then be sought in obeying the law. People generally are little better than actors, for whom it was once said:

> "Ah! let not censure term our fate our choice,
> The stage but echoes back the public voice;
> The drama's law, the drama's patrons give;
> For we that live to please must please to live."—

In the absence of the law people please too often by inhumanity, but with the law teaching the lesson of duty they will please by humanity. Thus will the law be an instrument of improvement, necessary in precise proportion to existing prejudice. Because people still please by inhumanity, therefore must there be a counteracting force. This precise exigency was foreseen by Rousseau, remarkable as writer and thinker, in a work which startled the world, when he said:

> "It is precisely because the force of things tends always to destroy equality that the force of legislation should always tend to maintain it."*

Never was a truer proposition; and now let us look at the cases for its application.

PUBLIC HOTELS.

I begin with public hotels or inns, because the rule with regard to them may be traced to the earliest periods of the common law. In the Chronicles of Holingshed, written in the reign of Queen Elizabeth, is a chapter "Of our Inns and Thoroughfares," where the inn, which is the original term for hotel, is described as "builded for the receiving of such travelers and strangers as pass to and fro;" and then the chronicler, boasting of his own country as compared with others, says "*every man* may use his inn as his own house in England."† In conformity with this boast was the law of England. The inn was opened to "every man," and this rule has continued from that early epoch, anterior to the first English settlement of North America, down to this day. The inn is a public institution, with well known rights and duties. Among the latter is the duty to receive all paying travelers decent in appearance and conduct, wherein it is distinguished from a lodging-house or boarding-house, which is a private concern, and not subject to the obligations of the inn.

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*Contrat Social, Liv. II, chap 11.

† Chronicles, Description of England, Book III, chap. 16, p. 444, London Edition, 4to., 1807.

For this statement I might cite authorities beginning with the infancy of the law, and not ending even with a late decision of the Superior Court of New York, where an inn is defined to be "a public house of entertainment *for all who choose to visit it*," which differs very little from the decriptive words of Holingshed.

The summary of our great jurist, Judge Story, shows the law:

"An innkeeper is bound to take in *all travelers and wayfaring persons* and to entertain them, if he can accommodate them for a reasonable compensation." * * * * "If an innkeeper improperly refuses to receive or provide for a guest, he is liable to be indicted therefor."*

Chancellor Kent states the rule briefly, but with fullness and precision:

"An innkeeper cannot lawfully refuse to receive guests to the extent of his reasonable accommodations, nor can he impose unreasonable terms upon them."†

This great authority says again, quoting a decided case:

"Innkeepers are liable to an action if they refuse to receive a guest without just cause. The innkeeper is even indictable for the refusal, if he has room in his house and the guest behaves properly."‡

And Professor Parsons, in his work on Contracts, so familiar to lawyers and students, says:

"He cannot so refuse unless his house is full and he is actually unable to receive them. And if on false pretense he refuses, he is liable to an action." §

The importance of this rule in determining present duty will justify another statement in the language of a popular Encyclopædia.

‖"One of the incidents of an innkeeper is, that he is *bound to open his house to all travelers, without distinction, and has no option to refuse such refreshment, shelter, and accommodation as he possesses*, provided the person who applies is of the description of a traveler, and able and ready to pay the customary hire, and is not drunk or disorderly or tainted with infectious disease."

And the Encyclopædia adds:

"As some compensation for this *compulsory hospitality* the innkeeper is allowed certain privileges."

Thus is the innkeeper under constraint of law, which he must obey; "bound to take in all travelers and wayfaring persons;" "nor can he impose unreasonable terms upon them;" and liable to an action and even to an indictment for refusal. Such is the law.

With this peremptory rule opening the doors of inns to all travelers, without distinction, to the extent of authorizing not only an action but an indictment for the refusal to receive a traveler, it is plain that the pending bill is only declaratory of existing law-giving to it the sanction of Congress.

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* Story's Commentaries on the Law of Bailments, § 476.

† Kents's Commentaries. Vol. 2, p. 592.

‡ Ibid., p. 596.

§ Parsons on Contracts, p. 627.

‖ Chamber's Encyclopædia, article Inn.

PUBLIC CONVEYANCES.

Public conveyances, whether on land or water, are known to the law as common carriers, and they, too, have obligations not unlike those of inns. Common carriers are grouped with innkeepers, especially in duty to passengers. Here again the learned Judge is our authority:

* "The first most general obligation on their part is to carry passengers with all reasonable diligence whenever they offer themselves and are ready to pay for their transportation. *This results from their setting themselves up, like innkeepers and common carriers of goods, for a common public employment, on hire.* They are no more at liberty to refuse a passenger, if they have sufficient room and accommodations, than an innkeeper is to refuse suitable room and accommodations to a guest."

Professor Parsons states the rule strongly:

† "It is his duty to receive *all passengers* who offer; to carry them the whole route; to demand no more than the usual and established compensation; *to treat all passengers alike;* to behave to all with civility and propriety; to provide suitable carriages and means of transportation." * * * * "And for the default of his servants or agents in any of the above particulars, or generally in any other points of duty, the carrier is directly responsible *as well as for any circumstances of aggravation which at tended the wrong.*"

The same rule in its application to railroads has been presented by a learned writer with singular force.

The company is under a public duty, as a common carrier of passengers, to receive all who offer themselves as such and are ready to pay the usual fare, and is liable in damages to a party whom it refuses to carry without a reasonable cause. It may decline to carry persons after its means of conveyance have been exhausted, and refuse such as persist in not complying with its reasonable regulations, or whose improper behaviour—as by their drunkenness, obscene language, or vulgar conduct—renders them an annoyance to other passengers. *But it cannot make unreasonable discriminations between persons soliciting its means of conveyance, as by refusing them on account of personal dislike, their occupation, condition in life,* COMPLEXION, RACE, *nativity, political or ecclesiastical relations.*‡

It has also been affirmed by the Supreme Court of Pennsylvania, where, on account of color, a person had been excluded from a street car, in Philadelphia. §

The pending bill simply reenforces this rule, which, without Congress, ought to be sufficient. But since it is set at naught by an odious discrimination, Congress must interfere.

THEATERS AND PLACES OF PUBLIC AMUSEMENT.

Theaters and other places of public amusement, licenced by law, are kindred to inns or public conveyances, though less noticed by jurisprudence. But, like their prototypes, they undertake to provide for the public under sanction of law. They are public institutions, regulated if not created by law, enjoying privileges, and in

* Story, Bailments, § 591.

† Parsons on Contracts, p. 228.

‡ Pierce, American Railroad Law, p. 489.

§ West Chester and Philadelphia Railroad Co. v. Miles, 55 Penn. State R., p. 209 (1867.)

consideration thereof assuming duties kindred to those of the inn and the public conveyance. From essential reason, the rule should be the same with all. As the inn cannot close its doors, or the public conveyance refuse a seat to any paying traveler, decent in condition, so must it be with the theater and other places of public amusement. Here are institutions whose peculiar object is the "pursuit of happiness," which has been placed among the equal rights of all. How utterly irrational the pretension to outrage a large portion of the community. The law can lend itself to no such intolerable absurdity, and this, I insist, shall be declared by Congress.

COMMON SCHOOLS.

The common school falls naturally into the same category. Like the others, it must open to all, or its designation is a misnomer and a mockery. It is not a school for whites or a school for blacks, but a school for all; in other words, a common school. Much is implied in this term, according to which the school harmonizes with the other institutions already mentioned. It is an inn where children rest on the road to knowledge. It is a public conveyance where children are passengers. It is a theater where children resort for enduring recreation. Like the others, it assumes to provide for the public; therefore it must be open to all; nor can there be any exclusion, except on grounds equally applicable to the inn, the public conveyance, and the theater.

But the common school has a higher character. Its object is the education of the young, and it is sustained by taxation to which all contribute. Not only does it hold itself out to the public by its name and its harmony with the other institutions; but it assumes the place of parent to all children within its locality, bound always to a parent's watchful care and tenderness, which can know no distinction of child.

It is easy to see that the separate school founded on an odious discrimination and sometimes offered as an equivalent for the common school, is an ill-disguised violation of the principle of Equality, while as a pretended equivalent it is an utter failure, and instead of a parent is only a churlish step-mother.

A slight illustration will show how it fails, and here I mention an incident occurring in Washington, but which must repeat itself often on a larger scale wherever separation is attempted. Colored children, living near what is called the common school, are driven from its doors, and compelled to walk a considerable distance, often troublesome, and in certain conditions of the weather difficult, to attend the separate school. One of these children has suffered from this exposure, and I have myself witnessed the emotion of the parent. This could not have occured had the child been received at the common school in the neighborhood. Now, it is idle to assert that children compelled to this exceptional journey to and fro, are in the enjoyment of equal rights. The superadded pedestrian-

ism and its attendant discomfort, furnish the measure of inequality in one of its forms, increased by the weakness or ill health of the child. What must be the feelings of a colored father or mother daily witnessing this sacrifice to the demon of Caste?

This is an illustration merely, but it shows precisely how impossible it is for a separate school to be the equivalent of the common school. And yet it only touches the evil without exhibiting its proportions. The indignity offered to the colored child is worse than any compulsory exposure, and here not only the child suffers, but the race to which he belongs is degraded, and the whole community is hardened in wrong.

The separate school wants the first requisite of the common school, inasmuch as it is not equally open to all; and since this is inconsistent with the declared rule of republican institutions, such a school is not republican in character. Therefore it is not a preparation for the duties of life. The child is not trained in the way he should go; for he is trained under the ban of inequality. How can he grow up to the stature of equal citizenship? He is pinched and dwarfed while the stigma of color is stamped upon him. This is plain oppression, which you, sir, would feel keenly were it directed against you or your child. Surely the race enslaved for generations has suffered enough without being doomed to this prolonged proscription. Will not the republic, redeemed by most costly sacrifice, insist upon justice to the children of the land, making the common school the benign example of republican institutions where merit is the only ground of favor.

Nor is separation without evil to the whites. The prejudice of color is nursed when it should be stifled. The Pharisaism of race becomes an element of character, when, like all other Pharisaisms, it should be cast out. Better even than knowledge is a kindly nature and the sentiment of equality. Such should be the constant lesson repeated by the lips and inscribed on the heart; but the school itself must practice the lesson. Children learn by example more than by precept. How precious the example which teaches that all are equal in rights. But this can be only where all commingle in the common school as in common citizenship. There is no separate ballot-box. There should be no separate school. It is not enough that all should be taught alike; they must all be taught together. They are not only to receive equal quantities of knowledge; all are to receive it in the same way. But they cannot be taught alike unless all are taught together; nor can they receive equal quantities of knowledge in the same way, except at the common school.

The common school is important to all; but to the colored child it is a necessity. Excluded from the common school, he finds himself too frequently without any substitute. But even where a separate school is planted it is inferior in character, buildings, furniture, books, teachers; all are second rate. No matter what the temporary disposition, the separate school will not flourish as the common

school. It is but an offshoot or sucker without the strength of the parent stem. That the two must differ is seen at once, and that this difference is adverse to the colored child is equally apparent. For him there is no assurance of education except in the common school, where he will be under the safeguard of all. White parents will take care not only that the common school is not neglected, but that its teachers and means of instruction are the best possible, and the colored child will have the benefit of this watchfulness. This decisive consideration completes the irresistible argument for the common school as the equal parent of all without distinction of color.

If to him that hath is given, according to the way of the world, it is not doubted that to him that hath not there is a positive duty in proportion to the necessity. Unhappily our colored fellow-citizens are in this condition. But just in proportion as they are weak and not yet recovered from the degradation in which they have been plunged, does the Republic owe its completest support and protection. Already a component part of our political corporation they must become part of the educational corporation also, with Equality as the supreme law.

OTHER PUBLIC INSTITUTIONS.

It is with humiliation that I am forced to insist upon the same equality in other public institutions of learning and science, also in churches and in the last resting-places of the dead. So far as any of these are public in character and organized by law, they must follow the general requirement. How strange that any institution of learning or science, any church or any cemetery should set up a discrimination so utterly inconsistent with correct principle. But I do not forget that only recently a colored officer of the National Army was treated with indignity at the communion-table. To insult the dead is easier, although condemned by Christian precept and heathen example. As in birth so in death are all alike, beginning with the same nakedness and ending in the same decay; nor do worms spare the white body more than the black. This equal lot has been the frequent occasion of sentiment and of poetry. Horace has pictured pallid death with impartial foot knocking at the cottages of the poor and the towers of kings. In the same spirit the early English poet, author of "Piers Ploughman," shows the lowly and the great in their common house.

> For in church's charnel-house
> Churls are hard to know;
> Knight and knave are together there. *

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* This sentiment of equality appears also in the *Roman de la Rose*, an early poem of France by Jean de Meung, where the bodies of princes are said to be worth no more than that of a ploughman:

> Car lor cors ne vault une pomme
> Outre le cors d'ung charruier.—Verse 18793.

And Chaucer even denies the distinction in life;

> But understand that I intend
> To deem no man in any age
> Gentle for his lineage;
> Though he be not highly born,
> He is gentle if he doeth
> What longeth to a gentleman.

This beautiful testimony, to which the honest heart responds, is from an age when humanity was less regarded than now. Plainly it shows how conduct and character are realities, while other things are but accidents.

Among the Romans degradation ended with life. Slaves were admitted to honorable sepulture, and sometimes slept the last sleep with their masters. The Slaves of Augustus and Livia were buried on the famous Appian Way, where their tombs with historic inscriptions have survived the centuries. "Bury him with his niggers," was the rude order of the rebel officer, as he flung the precious remains of our admirable Colonel Shaw into the common trench at Fort Wagner, where he fell mounting the parapets at the head of colored troops. And so was he buried, lovely in death as in life. The intended insult became an honor. In that common trench the young hero rests, symbolizing the great Equality for which he died. No Roman monument with its *Siste viator* to the passing traveller, no "labor of an age in piled stones," can match in grandeur that simple burial.

PREJUDICE OF COLOR.

Mr. President, against these conclusions there is but one argument, which, when considered, is nothing but a prejudice, as little rational as what Shylock first calls his "humor" and then "a lodged hate and a certain loathing," making him seek the pound of flesh from out the merchant's heart. The prejudice of color pursues its victim in the long pilgrimage from the cradle to the grave, barring the hotel, excluding from the public conveyance, insulting at the theater, closing the school, shutting the gates of science and playing its fantastic tricks even in the church where he kneels, and the grave where his dust mingles with the surrounding earth. The God-given color of the African is a constant offense to the disdainful white, who, like the pretentious lord, asking Hotspur for prisoners, can bear nothing so unhandsome "betwixt the wind and his nobility." This is the whole case. And shall those equal rights, promised by the great Declaration, be sacrificed to a prejudice? Shall that equality before the law, which is thebest part of citizenship, be denied to those who do not happen to be white? Is this a white man's Government, or is it a Government of "all men," as declared by our fathers? Is it a Republic of equal laws or an oligarcy of the skin? This is the question now presented.

Once Slavery was justified by color, as now the denial of Equal

Rights is justified, and the reason is as little respectable in one case as in the other. The old pretension is curiously illustrated by an incident in the inimitable autobiography of Franklin. An ante-revolutionary Governor of Pennsylvania remarked gaily that he much admired the idea of Sancho Panza, who, when it was proposed to give him a government, requested that it might be of "blacks," as then, if he could not agree with his people, he might sell them, on which a friend said, "Franklin, why do you continue to side with the dammed Quakers? Had you not better sell them?" Franklin answered, "The Governor has not yet *blacked* them enough." The autobiography proceeds to record that the Governor "labored hard to *blacken* the Assembly in all his messages, but they wiped his coloring as fast as he laid it on and placed it in return thick upon his own face, so that finding he was likely to be *negrofied* himself, he grew tired of the contest and quitted the Government."* To negrofy a man was to degrade him.

Thus in the ambition of Sancho Panza and in the story of theBritish governor, was color the badge of Slavery. "Then I can sell them," said Sancho Panza, and the British governor repeated the saying. This is changed now; but not entirely. At present nobody dares say, "I can sell them;" but the inn, the common conveyance, the theatre, the school, the scientific institute, the church, and the cemetery deny them the equal rights of freedom.

Color has its curiosities in history. For generations the Roman circus was convulsed by factions known from their livery as *white* and *red;* new factions adopted *green* and *blue*, and these latter colors raged with redoubled fury in the hippodrome of Constantinople. Then came *blacks* and *white*, Neri and Bianchi, in the political contentions of Italy, where the designation was from the accident of a name. In England the most beautiful of flowers, in two of its colors, became the badge of hostile armies, and the white rose fought agains the red. But it has been reserved for our Republic, dedicated to the rights of human nature, to adopt the color of the skin as the sign of separation and to organize it in law.

Color in the animal kingdom is according to the law of nature. The ox of the Roman campagna is gray. The herds on the banks of the Xanthus were yellow, on the banks of the Clitumnus they were white. In Corsica animals are spotted. The various colors of the human family belong to the same mystery. There are white, yellow, red, and black, with intermediate shades, but no matter what their hue, they are always MEN, gifted with a common manhood and entitled to common rights. Dr. Johnson made short work with the famous paradox of Berkley, denying the existence of matter. Stamping his foot on a stone, he exclaimed, "I refute it thus." And so in reply to every pretension against the equal rights of all, to every assertion of right founded on the skin, to every de-

* Franklin Autobiography, p. 299, edit. Bigelow.

nial of right because a man is something else than white, I point to that common manhood, which knows no distinction of color, and thus do I refute the whole inhuman, unchristian paradox.

THE WORD "WHITE."

Observe, if you please, how little the word "white" is authorized to play the great part it performs, and how much of an intruder it is in all its appearances. In those two title-deeds, the Declaration of Independence and the Constitution, there are no words of color, whether white, yellow, red, or black; but here is the fountain out of which all is derived. The Declaration speaks of "all men" and not of "all *white* men;" and the Constitution says, "We the people," and not "We the *white* people." Where then, is authority for any such discrimination, whether by the nation or any component part? There is no fountain or word for it. The fountain failing, and the word non-existent, the whole pretention is a disgusting usurpation, which is more utterly irrational, when it is considered that authority for such an outrage can be found only in positive words, plain and unambiguous in meaning. This was the rule with regard to Slavery solemnly declared by Lord Mansfield in the famous *Somersett* case, and it must be the same with regard to this pretension. It cannot be invented, imagined, or implied; it must be found in the very text; and this I assert according to fixed principles of jurisprudence. In its absence, Equality is the supreme law of the land, "and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

This conclusion is re-enforced by the several constitutional amendments; but I prefer to dwell on the original text of the Constitution, in presence of which you might as well undertake to make a king as to degrade a fellow-citizen on account of his skin.

There is also the original common law, antedating and interpreting the Constitution, which knew no distinction of color. One of the greatest judges that ever sat in Westminster Hall, Lord Chief Justice Holt, declared in sententious judgment, worthy of perpetual memory, "The common law takes no notice of Negroes being different from other men."* This was in 1706, seventy years before the Declaration of Independence, so that it was well known to our fathers as part of that common law to which, according to the Continental Congress, the several States were entitled.† Had these remarkable words been uttered by any judge in Westminster Hall, they would have been important, but they are enhanced by the character of their illustrious author, to whom belongs the kindred honor of first declaring from the bench that a slave cannot breathe in England.

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† Smith *vs.* Gould, 2 Lord Raym, 1274.

‡ Story: Commentaries on Constitution, vol. 1, § 199, note.

Among the ornaments of English law none has a purer fame than Holt, who was emphatically a great judge, being an example of learning and firmness, of impartiality and mildness, with a constant instinct for justice and a rare capacity in upholding it. His eminent merits compelled the admiration of his biographer, Lord Campbell, who does not hesitate to say, that "of all judges in our annals, Holt has gained the highest reputation, merely by the exercise of judicial functions," and then again, in striking words, that "he may be considered as having a genius for magistracy, as much as our Milton had for poetry or our Wilkie for painting."* And this rarest magistrate tells us judicially, "that the common law takes no notice of negroes being different from other men;" in other words, it makes no discrimination on account of color. This judgment is a torch to illumine the Constitution, while it shows how naturally our fathers, in the great Declaration said, "all men," and not "all *white* men," and in the Constitution said, "We the people," and not "We the *white* people."

In melancholy contrast with the monumental judgment of the English Chief Justice, are judicial decisions in our own country, especially that master-piece of elaborate inhumanity, the judgment of our late Chief Justice in the Dred Scott case. But it is in the States that the word "white" has been made prominent. Such learned debate on the rights of man dependent on complexion, would excite a smile, if it did not awaken indignation. There is Ohio, a much-honored State, rejoicing in prosperity, intelligence, and constant liberty; but even this eminent civilization has not saved its supreme court from the subtleties of refinement on different shades of human color. In the case of Lake v. Baker et al.,† this learned tribunal decided that a child of negro, Indian, and white blood, but of more than one-half white, was entitled to the benefits of the common school fund. But in a later case the same court decided that "children of three-eighths African and five-eighths white blood, but who are distinctly colored and generally treated and regarded as colored children by the community where they reside, are not, *as of right*, entitled to admission into the common schools set apart for the instruction of white youths."‡ Unhappy children! Even five-eighths white blood could not save them, if in their neighborhood they were known as "colored." But this magic of color showed itself yet more in the precedent of Polly Gray v. The State of Ohio,§ a case of robbery, where the prisoner, appearing on inspection "to be of a shade of color between mulatto and white," a negro was admitted to testify against her, and she was convicted; but on grave consideration by the whole court, it was decided that the witness was wrongly admitted,

* Campbell's Lives of the Chief Justices, Vol. II, pp. 118 and 135.

† 12 Ohio Rep., 237.

‡ Camp v. Board of Education of Logan, 9 Ohio State Rep., p. 406.

§ 4 Ohio Rep., 353.

and the judgment was reversed; and the decision stands on these words: "A negro is not an admissible witness against a quadroon on trial charged with crime!" Into this absurdity of injustice was an eminent tribunal conducted by the *ignis fatuus* of color.

These are specimens only. To what meanness of inquiry has not the judicial mind descended in the enforcement of an odious prejudice? Such decisions are a discredit to Republican Government, and so also is the existing practice of public institutions harmonizing with them. The words of the gospel are fulfilled, and the great Republic "conceived in liberty and dedicated to the proposition that all men are created equal," becomes "like unto *whited* sepulchers, which, indeed, appear beautiful outward, but are within full of dead men's bones and of all uncleanness."* Are not such decisions worse than dead men's bones or any uncleanness? All this seems the more irrational when we recall the divine example, and the admonition addressed to the prophet: "But the Lord said unto Samuel, *Look not on his countenance*, for the Lord seeth not as man seeth; for man looketh at the outward appearance, *but the Lord looketh on the heart.*"† To the pretension of looking at the skin and measuring its various pigments in the determination of rights, I reply that the heart and not the countenance must be our guide. Not on the skin can we look, though "white" as the coward heart of Macbeth, according to the reproach of his wife; but on that within constituting character, which showed itself supremely in Toussaint L'Ouverture, making him, though black as night, a luminous example, and is now manifest in a virtuous and patriotic people asking for their rights. Where justice prevails all depends on character. Nor can any shade of color be an apology for interference with that consideration to which character is justly entitled.

Thus it stands. The word "white" found no place in the original common law, nor did it find any place afterward in our two title-deeds of constitutional liberty, each interpreting the other, and being the fountain out of which are derived the rights and duties of the American citizen. Nor again did it find place in the constitutional amendment expressly defining a "citizen." How then can it become a limitation upon the citizen? By what title can any one say, "I am a white lord?" Every statute and all legislation, whether National or State, must be in complete conformity with the two title-deeds. To these must they be brought as to an unerring touchstone, and it is the same with the State as with the Nation. Strange, indeed, if an odious discrimination, without support in the original common law or the Constitution, and openly condemned by the Declaration of Independence, can escape judgment by skulking within State lines. Wherever it shows itself, whatever form it takes, it is the same bare-faced and insufferable imposture, a mere

* Matth. chap. xiii, v. 27.

† 1 Samuel, chap. xvi, v. 7.

relic of Slavery, to be treated always with indignant contempt and trampled out as an unmitigated "humbug." The word may not be juridical. I should not use it if it were unparliamentary; but I know no term which expresses so well the little foundation for this pretension.

CITIZENSHIP.

That this should continue to flaunt, now that Slavery is condemned, increases the inconsistency. By the decree against that wrong all semblance of apology was removed. Ceasing to be a slave, the former victim has become not only a man, but a citizen, admitted alike within the pale of humanity and within the pale of citizenship. As man he is entitled to all the rights of man, and as citizen he becomes a member of our common household, with equality as the prevailing law. No longer an African, he is an American; no longer a slave, he is a common part of the Republic, owing to it patriotic allegiance in return for the protection of equal laws. By incorporation with the body-politic, he becomes a partner in that transcendent unity, so that there can be no injury to him without injury to all. Insult to him is insult to an American citizen. Dishonor to him is dishonor to the Republic itself. Whatever he may have been, he is now the same as ourselves. Our rights are his rights; our equality is his equality; our privileges and immunities are his great freehold. To enjoy his citizenship, people from afar, various in race and complexion, seek our shores, losing here all distinctions of birth, as, into the ocean all rivers flow, losing all trace of origin or color, and there is but one uniform expanse of water, where each particle is like every other particle, and all are subject to the same law. In this citizenship the African is now absorbed.

Not only is he citizen. There is no office in the Republic, from lowest to highest, executive, judicial, or representative, which is closed against him. The doors of this Chamber swing open, and he sits here the coequal of any Senator. The doors of the other Chamber also swing open. Nay, sir, he may be Vice President; he may be President; but he cannot enter a hotel or public conveyance, or offer his child at the common school without insult on account of color. Nothing can make this terrible inconsistency more conspicuous. An American citizen, with every office wide open to his honorable ambition, in whom are all the great possibilities of our Republic, who may be anything according to merit, is exposed to a scourge which descends upon the soul, as the scourge of Slavery descended upon the flesh.

In ancient times the cry, "I am a Roman citizen," stayed the scourge of the lictor; and this cry with its lesson of immunity, has resounded through the ages, testifying to Roman greatness. Once it was on the lips of Paul, as appears in the familiar narrative:

"And as they bound him with thongs, Paul said unto the centurion that stood by, Is it lawful for you to scourge a man that is a Roman and uncondemned?

"When the centurion heard that, he went and told the chief-captain, saying, Take heed what thou doest; for this man is a Roman." * * *

* "And the chief captain also was afraid, after he knew that he was a Roman, and because he had bound him."*

Will not our "chief captain," will not Senators take heed what they do, that the scourge may not continue to fall upon a whole race, each one of whom is an American and uncondemned? Is our citizenship a feebler safeguard than that of Rome? Shall the cry, "I am an American citizen," be raised in vain against perpetual outrage?

In speaking of the citizen as of our household, I adopt a distinction employed by a great teacher in antiquity. Aristotle in counsels to his former pupil, Alexander, before his career of Asiatic conquest, enjoined a broad distinction between Greeks and barbarians. The former he was to treat as friends and of the household; the latter he was to treat as brutes and plants. This is the very distinction between citizenship and slavery. The citizen is of the national household; the slave is no better than brute or plant. But our brutes and plants are all changed into men; our barbarians are transformed into Greeks. There is no person among us now whatever his birth or complexion, who may not claim the great name of citizen, to be protected not less at home than abroad, but always, whether at home or abroad, by the national government, which is the natural guardian of the citizen.

EQUAL RIGHTS AND AMNESTY.

Mr. President, asking you to unite now in an act of justice to a much-oppressed race, which is no payment of that heavy debt accumulated by generations of wrong, I am encouraged by the pending measure of amnesty, which has the advantage of being recommended in the President's annual message. I regretted at the time, that the President signalized by his favor the removal of disabilities imposed upon a few thousand rebels who had struck at the life of the Republic, while he said nothing of cruel disabilities inflicted upon millions of colored fellow-citizens, who had been a main-stay to the national cause. But I took courage when I thought that the generosity proposed could not fail to quicken that sentiment of justice which I now invoke.

Toward those who assailed the Republic in war I have never entertained any sentiment of personal hostility. Never have I sought the punishment of any one; and I rejoice to know that our bloody rebellion closed without the sacrifice of a single human life by the civil power. But this has not surprised me. Early in the war I predicted it in this Chamber. And yet, while willing to be gentle with former enemies, while anxious not to fail in any lenity

* The Acts, chap. xxii, verses 25, 26, 29.

or generosity, and while always watching for the moment when all could be restored to our common household with equality as the prevailing law, there was with me a constant duty, which I could never forget, to fellow-citizens, white and black, who had stood by the Republic, and especially to those large numbers, counted by the million, still suffering under disabilities, having their origin in no crime, and more keenly felt than any imposed upon rebels. Believing that duty to these millions is foremost, and that until they are secured in equal rights we cannot expect the tranquillity which all desire, nay, sir, we cannot expect the blessings of Almighty God upon our labors, I bring forward this measure of justice to the colored race. Such a measure can never be out of order or out of season, being of urgent necessity and unquestionable charity.

There are strong reasons why it should be united with amnesty, especially since the latter is pressed. Each is the removal of disabilities, and each is to operate largely in the same region of country. Nobody sincerely favoring generosity to rebels should hesitate in justice to the colored race. According to the maxim in chancery, "Whoso would have equity must do equity." Therefore, rebels seeking amnesty must be just to colored fellow-citizens seeking equal rights. Doing this equity they may expect equity.

Another reason is controlling. Each is a measure of reconciliation, intended to close the issues of the war; but these issues are not closed unless each is adopted. Their adoption together is better for each, and, therefore, better for the country than any separate adoption. Kindred in object, they should be joined together and never put asunder. It is wrong to separate them. Hereafter the rebels should remember that their restoration was associated with the Equal rights of all, contained in the same great statute.

Clearly between the two the preëminence must be accorded to that for the Equal Rights of all, as, among the virtues, justice is above generosity. And this is the more evident when it is considered, that, acccording to Abraham Lincoln, the great issue of the war was Human Equality.

In making the motion by which these two measures are associated, I seize the first opportunity since the introduction of my bill nearly two years ago of obtaining for it the attention of the Senate. Beyond this is with me a sentiment of duty. In the uncertainties of life I would not defer for a day the discharge of this immeasurable obligation to fellow-citizens insulted and oppressed, nor would I postpone that much desired harmony which can be assured only through this act of justice. The opportunity is of infinite value and I dare not neglect it. My chief regret is that I cannot do more

to impress it upon the Senate. I wish I were stronger. I wish I were more able to exhibit the commanding duty. But I can try, and should the attempt fail, I am not without hope that it may be made in some other form, with increased advantage from this discussion. I trust it will not fail. Earnestly, confidently I appeal to the Senate for its votes. Let the record be made at last, which shall be the cap-stone of the reconstructed Republic.

I make this appeal for the sake of the Senate, which will rejoice to be relieved from a painful discussion; for the sake of fellow-citizens whom I cannot forget; and for the sake of the Republic now dishonored through a denial of justice. I make it in the name of the great Declaration, and also of that Equality before the Law which is the supreme rule of conduct, to the end especially that fellow-citizens may be vindicated in the "pursuit of happiness," according to the immortal promise, and that the angel Education may not be driven from their doors. I make it also for the sake of peace, so that at last there shall be an end of Slavery, and the rights of the citizen shall be everywhere under the equal safeguard of national law. There is beauty in art, in literature, in science, and in every triumph of intelligence, all of which I covet for my country; but there is a higher beauty still in relieving the poor, in elevating the downtrodden, and being a succor to the oppressed. There is true grandeur in an example of justice, making the rights of all the same as our own, and beating down prejudice, like Satan, under our feet. Humbly do I pray that the Republic may not lose this great prize, or postpone its enjoyment.

Mr. VICKERS, of Maryland, on the same day made an elaborate effort on the position of the South and amnesty, which he opened by saying that he should not follow Mr. Sumner in his remarks, "because his amendment is not only not germane to the subject-matter properly before the Senate, but is so palpably unconstitutional that I consider it unnecessary to make any comment upon it."

January 17. Mr. SUMNER spoke again at length, introducing testimony, being letters, resolutions, and articles from various parts of the country, and especially from the South, showing the necessity of Congressional action for the protection of equal rights, and that such protection was earnestly desired by colored fellow-citizens.

At the close he remarked, on the importance of equality in the school-room:

One of the most important aspects of the pending measure is its operation on the common school, making it what is implied in its name, a school open to all. The term "common" explains itself. Originally, in England under the law, it defined outlying land near a village open to all the inhabitants; and the common school is an institution of education open to all. If you make it for a class, it is not a common school, but a separate school, and, as I have said frequently to-day, and also before in addressing the Senate, a separate

school never can be a *substitute* for the common school. The common school has for its badge *equality*. The separate school has for its badge *inequality*. The one has open doors for all; the other has open doors only for those of a certain color. That is contrary to the spirit of our institutions, to the promises of the Declaration of Independence, and to all that is secured in the recent constitutional amendments. So long as it continues the great question of the war remains still undecided; for, as I explained the other day, that transcendant issue as stated by Jefferson Davis, and then again accepted by Abraham Lincoln, was equality. Only by maintaining equality will you maintain the great victory of the war.

Here in Washington this very question of separate schools has for some time agitated the community. The colored people have themselves acted. They speak for equal rights. I have in my hand a communication to the Senate from the Secretary of the Interior, under date of January 18, 1871, covering a report from the trustees of the colored schools of Washington and Georgetown, in which they make most important and excellent recommendations. How well at last the colored people speak! Who among us can speak better than they in the passages I am about to read?

After reading these passages, which he pronounced "unanswered and unanswerable," Mr. SUMNER proceeded:

Sir, I bring this testimony to a close. I have adduced letters, resolutions, addresses from various States, showing the sentiments of the colored people. I have adduced them in answer to allegations on this floor that the pending measure of equal rights is not needed, that the pending measure is for social equality. Listening to these witnesses, you see how they all insist that it is needed, and that it is in no respect for social equality. It is a measure of strict legal right.

I adduce this testimony also in answer to the allegation so loftily made in debate the other day that the colored people are willing to see the former rebels amnestied, trusting in some indefinite future to obtain their own rights. I said at the time that such an allegation was irrational. I now show you that it is repudiated by the colored people. They do not recognize the Senators who have undertaken to speak for them as their representatives. They insist upon their rights before you play the generous to rebels. They insist that they shall be saved from indignity when they travel, and when they offer a child at the common school; that they shall be secured against any such outrage before you remove the disabilities of men who struck at the life of this Republic.

Now, sir, will you not be just before you are generous? Or if you do not place the rights of the colored people foremost, will you not at least place them side by side with those of former rebels? Put them both where I seek now to put them, in the same statute, so that hereafter the rebels shall know that generosity to them was

associated with justice to their colored fellow-citizens: that they all have a common interest; that they are linked together in the community of a common citizenship and in the enjoyment of those liberties promised by the Declaration of Independence and guarantied by the Constitution of the United States?

Mr. FRELINGHUYSEN, of New Jersey, followed with remarks chiefly in criticism of the form of the bill, and made several suggestions of amendment. Mr. Sumner stated that his object was "to get this measure in the best shape possible," and that he should welcome any amendment from any quarter; that he did not feel as strongly as the Senator "the difference between his language and the text," but that he was anxious to harmonize with him. Mr. Sumner afterwards modified his bill in pursuance of Mr. Frelinghuysen's suggestions.

The debate was continued on different days; Mr. Sawyer, of South Carolina; Mr. Thurman, of Ohio, Mr. Morrill, of Maine, Mr. Saulsbury of Delaware, Mr. Davis of Kentucky, speaking strongly against the bill of Mr. Sumner. Mr. Sawyer objected to it as an amendment to the Amnesty bill. Mr. Nye, of Nevada, and Flanagan, of Texas, spoke for the bill. The latter, after saying that he had read the Constitution for himself, and was "satisfied that the proposed amendment was constitutional," added other reasons:

"One is, that I discover that if we should remain here, as we certainly shall do, for a considerable period, petitions will come in to such a degree, requiring so much paper, that really the price will be vastly enhanced, and it will thereby become a considerable tax to the Government of the United States, for the Senator is receiving, I might almost say, volumes; I know not what the quantity is; it is immense, however, from all parts of the nation."

And then again:

"Again I am reminded that it is best to get rid of the imposing Senator [Mr. Sumner] on that subject, just as the lady answered her admirer. The suitor had been importuning her time and again, and she had invariably declined to accept the proposition. At length, however, being very much annoyed, she concluded to say "yes," just to get rid of his importunity. I want to go with the Senator to get rid of this matter, [laughter] because, really, Mr. President, we find his bill here as a breakwater. A concurrent resolution was introduced here for the adjournment of Congress at a particular day. Well, you saw that bill thrust right on it. "Stop," says he, "you must not adjourn until my bill is passed." There it was again; here it is now; and we shall continue to have it; and I am for making peace with it by a general surrender at once. [Laughter.]

I stop not there, Mr. President; I go further, and I indorse the Senator to the utmost degree in his proposition."

Mr. MORRILL, in an elaborate argument, denied point blank the constitutionality of the bill, insisting, and repeating with different forms of expression, that "the exercise of this power on the part of Congress would be a palpable invasion of the rights of the people of the States in their purely domestic relations;" "this Constitution has given us no such authority and no such power."

January 31st. Mr. SUMNER replied to Mr. MORRILL.

Mr. President, before this debate closes, it seems to me I shall be justified in a brief reply to the most extraordinary, almost eccentric, argument by my excellent friend, the Senator from Maine, [Mr. Morrill.] He argued against the constitutionality of the pending amendment; you all remember with how much ingenuity and earnestness. I shall not follow him in the details of that speech. I shall deal with it somewhat in the general, and part of the time I shall allow others to speak for me.

But before I come upon that branch of the case, I feel that in justice to colored fellow-citizens I ought to see that they have a hearing. Senators whom they helped elect show no zeal for their rights. Sir, they have a title to be heard. They are able; they can speak for themselves; but they are not here to speak. Therefore they can be heard only through their communications. Here is one from a member of the Virginia House of delegates. It came to my hands yesterday, and is dated "Richmond, January 29, 1872." I wish the Senate would hear what this member of the Virginia house says on the pending amendment.

The letter, as read by Mr. SUMNER, concluded as follows:

"We all, sir, the whole colored population of Virginia, make this appeal through you to a generous Senate, and pray for the sake of humanity, justice, and all that is good and great, that equal common rights may be bestowed to a grateful and loyal people before disabilities shall have been stricken from those who struck at the very heart-strings of the Government."

Can any Senator listen to that appeal and not feel that this Virginian begins to answer the Senator from Maine? He shows an abuse; he testifies to a grievance. Sir, it is the beginning of the argument. My friend seemed almost to ignore it. He did not see the abuse; he did not recognize the grievance.

Mr. MORRILL. I certainly did see it, and I certainly recognize it. The only difference between the Senator and myself, so far as the argument is concerned, is one simply of power.

Mr. SUMNER. I shall come to that. But first is the point whether the Senator recognizes the grievance; and here let me tell my excellent friend that did he see the grievance as this colored citizen sees it; did he feel it as this colored citizen feels it, sir, did he simply see it as I see it, he would find power enough in the Constitution to apply the remedy. I know the generous heart of the Senator, and I know that he could not hesitate, did he really see this great grievance. He does not see it in its proportions. He does not see how in real character it is such that it can be dealt with only by the National power. I drive that home to the Senator. It is the beginning of the argument in reply to him that the grievance is such that it can be dealt with adequately only by Congress. Any other mode is inefficient, inadequate, absurd. I begin, therefore, by placing the Senator in that position. Unhappily he does not see the grievance. He has no conception of its vastness extend-

ing everywhere, with ramifications in every State, and *requiring one uniform remedy which, from the nature of the case, can be supplied only by the nation.*

And now I come to the question of power, and here I allow a colored fellow-citizen to be heard in reply to the Senator. I read from a letter of E. A. Fulton, of Arkansas:

"I have seen and experienced much of the disabilities which rest upon my race and people from the mere accident of color. Grateful to God and the Republicans of this country for our emancipation and the recognition of our citizenship, I am nevertheless deeply impressed with the necessity of further legislation for the perfection of our rights as American citizens."

This colored citizen is impressed, as the Senator is not, with the necessity of further legislation for the perfection of his rights as an American citizen. He goes on:

"I am also thoroughly persuaded that this needed legislation should come from the national Congress."

So he replies to my friend.

"Local or State legislation will necessarily be partial and vacillating. Besides, our experience is to the effect that the local State governments are unreliable for the enforcement or execution of laws for this purpose.

"In Arkansas, for example, a statute was enacted by the General Assembly of 1868 for the purpose of securing the equal rights of colored persons upon steamboats, railroads, and public thoroughfares generally. The provisions of the statute were deemed good, if not entirely sufficient; yet to the present time gross indignities continue to be perpetrated upon colored travelers, men and women, while those charged under oath to see the laws faithfully executed look on with seeming heartless indifference, while the law remains a dead letter on the statute book.

"With a care and anxiety which one vitally interested alone can feel, I have examined and weighed this subject."

Here, sir, he replies again to my friend. I should like the Senator to notice the sentence,

"With a care and anxiety which one vitally interested alone can feel"—

as, of course, my friend cannot feel, since he has not that vital interest.

"I have examined and weighed this subject."

What does he conclude?

"I am fully persuaded that nothing short of national legislation and national authority for its enforcement will be found sufficient for the maintenance of our God-given rights as men and women, citizens of this great and free country."

Mr. MORRILL, of Maine. As my honorable friend emphasizes that particular point, will he be kind enough to say whether he reads that letter as an authority showing that Congress has the power to do what he asks, or whether it is simply an individual opinion that some such legislation is necessary?

Mr. SUMNER. I think my friend must know that I do not read the letter as an authority according to his use of the term. By and by I shall come to the authority. I read it as the opinion of a colored citizen——

Mr. MORRILL, of Maine. As to the necessity of legislation?

Mr. SUMNER. Who has felt the grievance and testifies that the remedy can only be through the nation. There is where he differs from my friend.

Mr. MORRILL, of Maine. It is not necessary to read evidence to me that the colored people think there ought to be legislation by Congress. The question between the Senator and myself is precisely this: what is your authority?

Mr. SUMNER. I am coming to that. This is only the beginning.

Mr. MORRILL, of Maine. When you come to that, and make an issue with me, I shall be ready to answer.

Mr. SUMNER. I shall come to that in due season and give the Senator the opportunity he desires. I shall speak to the question of power. Meanwhile I proceed with the letter:

"I have read with joy your recently presented supplementary civil rights bill. It meets my hearty approval. In the name of God and down-trodden humanity I pray you press its enactment to a successful consummation.

"Such a law, firmly enforced, coupled with complete amnesty"—

You see the point, Mr. President—"coupled with complete amnesty,"—

"for political offenses to those who once held us in bondage, will furnish, as I believe, the only sound basis of reconstruction and reconciliation for the South."

Now my friend will not understand that I exaggerate this letter. I do not adduce it as authority, but simply as testimony, showing what an intelligent colored fellow-citizen thinks with regard to his rights on two important points much debated: first as to the necessity of remedy through the national Government, and, secondly, as to the importance of uniting this assurance of equal rights with amnesty, so that the two shall go together.

Before coming directly to the authority on which my friend is so anxious, I call attention to another communication, from the president of the Georgia Civil Rights Association, which I think should be read to the Senate. It is addressed to me officially; and if I do not read it the Senate will not have the benefit of it. There is no Senator from Georgia to speak for the Civil Rights Association. I shall let them speak by their president, Captain Edwin Belcher:

"I realize more and more, every day, the necessity of such a measure of justice as your "supplementary bill." When that becomes a law the freedom of my race will then be complete."

I call attention to that point. This writer regards the pending measure essential to complete the abolition of slavery, and I hope you will not forget this judgment, because it will be important at a later moment in vindicating the constitutional power of Congress. "When that becomes a law the freedom of my race will then be complete"—not before, not till then, not till the passage of the

supplementary civil rights bill. Down to that time slavery still exists. Such, sir, is the statement of a man once a slave, and who knows whereof he speaks; nor can it be doubted that he is right.

After reading the letter at length Mr. Sumner proceeded:

This instructive letter is full of wise warnings, to which we cannot be indifferent. It is testimony, but it is also argument.

The necessity of this measure appears not only from Georgia, but even from Pennsylvania. I have in my hands an article by Richard T. Greener, the principal of the colored institute at Philadelphia, where he vindicates the pending bill. I read a brief passage, and simply in reply to the Senator from Maine, on the necessity of congressional action. Mr. Greener is no unworthy representative of his race. He knows well how to vindicate their rights. Here is what he says:

"Not three weeks ago the committee which waited on the President from this city, in behalf of Mr. Sumner's bill, were refused accommodations at the depot restaurant in Washington, and only succeeded in being entertained by insisting on just treatment. It has been scarcely three months since the secretary of the American legation at Port-au-Prince, Rev. J. Theodore Holly, with his wife and three children, were refused a state-room on the steamer running between New Haven and New York city."

Then he shows the necessity:

"Should Minister Bassett himself, indorsed by the Union League, return home and arrive late at night, there are probably not two hotels, such as a gentleman of his station would wish to stop at, where he could be accommodated; not a theater or place of amusement which he could visit without insult or degrading restrictions; not a church, except it be a Quaker or Catholic one, where he would not be shown into the gallery, or else be made to feel uncomfortable, so outrageous are the current American ideas of common hospitality and refinement; so vindictive is this persecution of a humble class of your fellow-citizens."

Lastly he vindicates the pending measure and asks for a two-thirds vote:

"The supplementary bill ought to pass by a two-thirds vote. If it passes by a single majority, we shall, of course, be satisfied, and understand the reason why. If Republican Senators, elected by colored votes, give their influence and votes against this measure, it might be well for them to remember that Negroes, along with instinct, have 'terrible memories.'"

And now, sir, after these brief illustrations where our colored fellow citizens have spoken for themselves, showing the necessity of legislation by the nation, because only through the nation can the remedy be applied, I come to the precise argument of the Senator. He asks for the power. Why, sir, the national Constitution is bountiful of power; it is overrunning with power. Not in one place or two places or three places, but almost everywhere, from the preamble to the last line of the latest amendment; in the original text and in all our recent additions, again and again. Still further, in that great rule of interpretation conquered at Appomattox, which, far beyond the surrender of Lee, was of infinite value to this Republic. I say a new rule of interpretation for the national Constitution, according to which, in every clause and every line and

every word, it is to be interpreted uniformly and thoroughly for human rights. Before the rebellion the rule was precisely opposite. The Constitution was interpreted always, in every clause and line and word for human slavery. Thank God, it is all changed now. There is another rule, and the national Constitution, from beginning to end, speaks always for the rights of man. That, sir, is the new rule. That, sir, is the great victory of the war, for in that are consummated all the victories of many bloody fields; not one victory or two but the whole—gleaming in those principles of Liberty and Equality which are now the pivot jewels of the Constitution.

My excellent friend from Maine takes no notice of all this. He goes back for his rule to those unhappy days before the war. He makes the system of interpretation, born of slavery, his melancholy guide. With such mentor how can he arrive at any conclusion other than alien to human rights? He questions everything; denies everything. He finds no power for anything unless distinctly written in positive and precise words. He cannot read between the lines; he cannot apply a generous principle which will co-ordinate everything there in harmony with the Declaration of Independence.

When I refer to the Declaration I know well how such an allusion is too often received on this floor. I have lived through a period of history, and do not forget that I here heard our great title-deed arraigned as a "self-evident lie." There are Senators now who, while hesitating to adopt that vulgar extravagance of dissent, are willing to trifle with it as a rule of interpretation. I am not frightened. Sir, I insist that the national Constitution must be interpreted by the national Declaration. I insist that the Declaration is of equal and co-ordinate authority with the Constitution itself. I know, sir, the ground on which I stand. I need no volume of law, no dog-eared page, no cases to sustain me. Every lawyer is familiar with the fundamantal beginning of the British Constitution in Magna Charta. But what is Magna Charta? Simple concessions wrung by barons of England from an unwilling monarch; not an act of Parliament, nothing constitutional, in our sense of the term; simply a declaration of rights; and such was the Declaration of Independence. And now, sir, I am prepared to insist that, whenever you are considering the Constitution, so far as it concerns human rights, you must bring it always to that great standard; the two must go together, and the Constitution can never be interpreted in any way inconsistent with the Declaration. Show me any words in the Constitution applicable to human rights, and I invoke at once the great truths of the Declaration as the absolute guide to their meaning. Is it a question of power? Then must every word in the Constitution be interpreted so that Liberty and Equality shall not fail.

My excellent friend from Maine takes no notice of this. He goes

back to days when the Declaration was denounced as "a self-evident lie," and the Constitution was interpreted always in the interest of slavery. Sir, I object to this rule. I protest against it with all my mind and heart and soul. I insist that just the opposite must prevail, and I start with this assumption. I shall not make a long argument, for the case does not require it. I desire to be brief You know the amendment.

"SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

Here is an amendment abolishing slavery. Does it abolish slavery half, three quarters, or wholly? Here I know no half, no three quarters; I know nothing but the whole. And I say the article abolishes slavery entirely, everywhere throughout this land,—root and branch,—in the general and the particular,—in length and breadth and then in every detail. Am I wrong? Any other interpretation dwarfs the great amendment and permits slavery still to linger among us in some of its insufferable pretensions. Sir, I insist upon thorough work. When I voted for that article I meant what it said, that slavery should cease absolutely, entirely, and completely. But, sir, Congress has already given its testimony to the true meaning of the article. Shortly after its adoption, it passed what is known as the civil rights law, by which the courts of justice throughout the country, State as well as national, are opened to colored persons, who are authorized not only to sue and be sued, but also to testify—an important right most cruelly denied, even in many of the Northern States, making the intervention of the nation necessary, precisely as it is necessary now. That law was passed by both Houses of Congress, vetoed by the President, and passed then by a two-thirds vote over the veto of the President; and all in pursuance of these words:

"Congress shall have power to enforce this article by appropriate legislation."

Remark, if you please, the energy of that expression; I have often had occasion to call attention to it. It is a departure from the old language of the Constitution;

"The Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

It is stronger,—more energetic—

"Congress shall have power to *enforce*."—

Mark, sir, the vitality of the word—

"to *enforce* this article by appropriate legislation."

The whole field of apt legislation is open to be employed by Congress in enforcing abolition. Congress entered upon that field and passed the original civil rights act. And who among us now, un-

less one of my friends on the other side of the chamber, questions the constitutionality of that act? Does any one? Does any one doubt it? Does any one throw any suspicion upon it? Would any one have it dropped from the statute-book on any ground of doubt or hesitation? If there is any Senator in this catagory, I know him not. I really should like to have him declare himself. I will cheerfully yield the floor to any one willing to declare his doubts of the constitutionality of the civil right act. [After waiting a sufficient time.] Sir, there is no Senator who doubts it.

Now, how can any Senator, recognizing the constitutionality of the original civil rights act, doubt the present supplementary measure? Each stands on the same bottom. If you doubt one, you must doubt the other. If you rally against that amendment, your next move should be to repeal the existing civil rights act as inconsistent with the Constitution. Why does not my excellent friend from Maine bring forward his bill? Why does he not invite the Senate to commence the work of destruction, to tear down that great remedial statute? Why is he silent? Why does he hang back, and direct all his energies against the supplementary measure, which depends absolutely upon the same constitutional power? If he is in earnest against the pending motion, he must show the same earnestness against the preliminary act.

When I assert that Congress has ample power over this question, I rely upon a well-known text often cited in this Chamber, often cited in our courts—the judgment of the Supreme Court pronounced by Chief Justice Marshall, in the case of McCulloch v. State of Maryland, from which I will read a brief extract:

"But the argument on which most reliance is placed is drawn from the peculiar language of this clause. Congress is not empowered by it to make all laws which may have relation to the powers conferred on the Government, but such only as may be '*necessary and proper*' for carrying them into execution. The word '*necessary*' is considered as controlling the whole sentence, and as limiting the right to pass laws for the execution of the granted powers to such as are indispensable, and without which the power would be nugatory, that it excludes the choice of means, and leaves to Congress in each case, that only which is most direct and simple."

These words show how the case was presented to the court. Here is the statement of John Marshall:

"We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national Legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and *all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.*" (4 *Wheaton's Reports*, pages 413, 421.

In other words, the Supreme Court will not undertake to sit in judgment on the means employed by Congress in carrying out a power which exists in the Constitution. Now the power plainly exists in the Constitution; it is to abolish slavery, and it is for Congress in its discretion to select the means. Already it selected the

civil rights law as the first means for enforcing the abolition of slavery. I ask it to select the supplementary bill now pending as other means to enforce that abolition, One of the letters that I have read to-day from a leading colored citizen of Georgia said: "When that becomes a law the freedom of my race will then be complete." It is not complete until then, and therefore, in securing that freedom, in other words in enforcing the constitutional amendment, Congress is authorized to pass the bill which I have felt it my duty to introduce and which is now moved on the amnesty bill.

I might proceed with this argument. But details would take time, and I think they are entirely needless. The case is too strong. It needs no further argument. You have the positive grant of power. You have already one instance of its execution, and you have the solemn decision of the Supreme Court of the United States declaring that it is in the discretion of Congress to select the means by which to enforce the powers granted. How, sir, can you answer this conclusion? How can my excellent friend answer it?

Were I not profoundly convinced that the conclusion founded on the thirteenth amendment was unanswerable, so as to make further discussion surplusage, I should take up the fourteenth amendment and show how, in the first place, we have there the definition of a citizen of the United States, and then in the second place, an inhibition upon the States, so that they cannot make or enforce any law which shall abridge the privielges or immunities of citizens of the UnitedStates; nor deny to any person within its jurisdiction the equal protection of the laws. And here again Congress is empowered to enforce these provisions by appropriate legislation. Surely, if there were any doubt in the thirteenth amendment, as there is not, it would all be removed by this supplementary amendment. Here is the definition of citizenship, and the right to the equal protection of the laws, in other words, citizenship and equality, both placed under the safeguard of the nation. Whatever will fortify these is within the power of Congress, by express grant. But if these are interpreted by the Declaration of Independence, as I insist, the conclusion is still more irresistible.

Add the original text of the Constitution, declaring that "the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States." These words, already expounded by judicial interpretation, are now elevated and inspired by the new spirit breathing into them the breath of a new life, and making them yet another source of Congressional power for the safeguard of equal rights.

But I have not done with my friend. I am going to hand him over to be answered by one of his colored fellow-citizens who has no privilege on this floor. I put George T. Downing face to face with my excellent friend, the Senator from Maine. The Senator will find his argument in one of the papers of the day. I shall read enough to show that he understands the question, even constitutionally:

"But I come directly," says he, "to 'misconception'—to thwarting justice. The Senator"—

Referring to the Senator from Maine—

"opposes Senator Sumner's amendment; he says it invokes an implication of some principle or provision of the Constitution somewhere, or an implication arising from the general fitness of things possibly, to enable it to invade the domiciliary rights of the citizens of a State."

These were the precise words of the Senator; I remember them well; I was astonished at them. I could not understand by what delusion, hallucination, or special *ignis fatuus* the Senator was led into the idea that in this bill there is any suggestion of invading the domiciliary rights of the citizens of the States. Why, sir, the Senator has misread the bill. I will not say he has not read it. He certainly has misread it, and now let our colored fellow-citizen answer him:

"I do not speak unadvisedly when I declare that no such end is desired by a single intelligent colored man; no such design can be gleaned from any word ever spoken by CHARLES SUMNER; his amendment cannot by any reasonable stretch of the imagination be open to the implication."

Not a Senator, not a lawyer says that; it is only one of our colored fellow-citizens whom the Senator would see shut out of the cars, shut out of the hotels, his children shut out from schools, and himself shut out from churches, and seeing these things the Senator would do nothing because Congress is powerless! Our colored fellow-citizen proceeds:

"The amendment says that all citizens, white and black, are entitled to the equal and impartial enjoyment of any accommodation, advantage, facility or privilege furnished by common carriers, by inn-keepers, by licensed theatres, by managers of common schools supported by general taxation, or authorized by law. Does any of the same invade the domiciliary rights of a citizen in any State?"

That is not my language, sir; it is Mr. Downing's.

"Could any man, white or black, claim a right of entrance into the domicile of the poorest, the humblest, the weakest citizen of the State of Maine by virtue of Mr. SUMNER'S amendment when it shall become a law? Certainly not. A man's private domicile is his own castle: no one, with even kingly pretensions, dare force himself over its threshold. But the public inn, the public or common school, the public place of amusement, as well as common carriers, asking the special protection of law, created through its action on the plea and for the benefit of the public good, have no such exclusive right as the citizens may rightfully claim within his home; and it seems to me to be invoking the aid of an unholy prejudice in attempting to force the idea that Mr. SUMNER desires, or that the colored people, in petitioning for civil rights, are designing to break into social circles against the wish of those who compose them."

It is difficult to answer that. The writer proceeds:

"I have the testimony of Senator Morrill, this same Senator, to the fact 'that equality before the law, without distinction of race or color,' is a constitutional right, for we have his declaration to that effect recorded; and further setting forth that it is 'the duty of the Circuit Court of the United States to afford a speedy and convenient means for the arrest and examination of persons charged with a disregard of the same.'" (See proceedings of Senate, April, 1866.)

I have not verified this reference; I read it as I find it. The Senator will know whether he has heretofore employed such generous language, in just conformity with the Constitution. Assuming now

that he has used this language, I think, as a lawyer, he will feel that George T. Downing has the better of him. I ask my friend to listen, and perhaps he will confess:

"If equality before the law be a constitutional right, as testified to by Mr. Morrill and if it be the duty of the Federal courts to protect the same, as he further affirms, is not all conceded as to the right of Congress to act in the case in question when it is shown that the public inn, the public school, the common carrier, are necessary institutions under the control of law, where equality without regard to race or color may be enforced? Can there be any question as to the same? I further invoke the letter of the Constitution *in behalf of Congressional action* to protect me in the rights of an American citizen; for instance"—

Again I say, this is not the argument of a Senator, nor of a lawyer, but only of one of those colored fellow-citizens for whom my friend can find no protection—

"for instance, that article which says: 'The judicial power shall extend to all cases in law and equity arising under the Constitution.' If equality before the law be, as Mr. Morrill has declared, a constitutional right, the judicial power of the United States reaches the same. Another section says: 'The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

The writer is not content with one clause of the Constitution:

"Another section says: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.' Another section says: 'The United States shall guarrntee to every State in the Union a republican form of government.' The section last cited contemplates a case where a controlling power shall strive to have it otherwise, and the subordinated individuals need protection. Congress is left to judge of what constitutes a republican form of government, and consequently of the rights incidental thereto."

Then again:

"Another section says: 'The Constitution and the laws of the United States, which shall be made in pursuance thereof, shall be the supreme law of the land.' Another section says that 'Congress has power to make all laws which shall be necessary and proper for carrying into execution the powers invested by the Constitution in the Government of the United States.' Will it be said that the power is not vested in the Government of the United States to protect the rights of its citizens, and tha, it is not necessary and proper to do so?

"The Senator admits that there is a constitutional inhibition against proscribing men because of their race or color in the enjoyment of rights and privileges, but he denies the existence of a constitutional right on the part of a Congress to act in defense of the supreme law when a State may disregard the Constitution in this respect. I read the Constitution otherwise. I conclude that when the supreme law says of right a thing shall not be, Congress, which has that supreme law as its guide and authority, has the power to enforce the same."

That, sir, is the reply of a colored fellow-citizen to the speech of my excellent friend. I ask Senators to sit in judgment between the speech and the reply. I ask if my excellent friend is not completely answered by George T. Downing? If the latter has been able to do this, it is because of the innate strength of his own cause and the weakness of that espoused by the Senator. Our colored commentator places himself on the texts of the Constitution and interprets them liberally, justly, for the equal rights of his race. The Senator places himself on those same texts, but in an evil moment surrenders to that malignant interpretation which prevailed before the war and helped precipitate the rebellion.

Sir, I ask, is not the constitutionality of this measure vindicated? Does any one really doubt its constitutionality? Can any one show a reason against it? Sir, it is as constitutional as the Constitution itself. You may arraign that great charter; you may call it in doubt; you may say that it is imperfect, that it is wrong, but I thank God it exists to be our guide and master, so that even my excellent friend, the able and ingenious Senator, snatching reasons, if not inspiration, from *ante bellum* arguments, when State Rights were the constant cry, and from speeches in other days, cannot overturn it. The Constitution still lives, and as long as it lives it must be interpreted by the Declaration of Independence to advance human rights.

This is my answer to the Senator on the question of power to which he invited attention. I have spoken frankly, I hope not unkindly: but on this question I must be plain and open. Nor is this all.

Sir, there is a new force in our country. I have alluded to a new rule of interpretation; I allude now to a new force; it is the colored people of the United States counted by the million; a new force with votes, and they now insist upon their rights. They appear before you in innumerable petitions, in communications, in letters, all praying for their rights. They appeal to you in the name of the Constitution which is for them a safeguard; in the name of that great victory over the Rebellion through which peace was sealed; and they remind you that they mean to follow up their appeal at the ballot-box. I have here an article in the last New National Era, of Washington, a journal edited by colored persons—Frederick Douglass is the chief editor—and devoted to the present Administration. What does it say?

"Here, then, is a measure, just and necessary, the embodiment of the very principles upon which the Government is founded, and which distinguish it from monarchical and aristocratic Governments—a measure upon which there should be no division in the Republican party in Congress, and of which there is no question as to its being of more importance than amnesty. Without this measure amnesty will be a crime merciless to the loyal blacks of the South and an encouragement of treason and traitors. We have met colored politicians from the South who think that the amnesty proposition is an attempt to gain the good will of the white voters of the South at the expense of the colored voters. Should this feeling become general among the colored people there is danger of a division of the colored vote to such an extent as to defeat the Republican party. Give us the just measure of protection of our civil rights before the pardoning of those who deny us our rights and who would destroy the nation, and the colored people can feel assured that they are not to be forced into a back seat, and that traitors are not to be exalted."

Is not this natural? If you, sir, were a colored citizen, would you not also thus write? Would you not insist that you must doubt any political party pretending to be your friend that failed in this great exigency? I know you would. I know you would take your vote in your hand and insist upon using it so as to secure your own rights.

The testimony accumulates. Here is another letter which came this morning signed by "an enfranchised Republican," dated at

Washington, and published in the New York Tribune. It is entitled "President Grant and the colored people." The writer avows himself in favor of the renomination of General Grant, but does not disguise his anxiety at what he calls "the President's unfortunate reply to the colored delegates which lately waited on him."

Now, sir, in this sketch you see a slight portraiture of a new force in the land, a political force which may change the balance at any election, at a State election, at a Presidential election even. Take for instance Pennsylvania. There are colored voters in that State far more than enough to turn the scale one way or the other as they incline; and those voters, by solemn petition, appeal to you for their rights. The Senator from Maine rises in his place and gravely tells them that they are all mistaken, that Congress has no power to give them a remedy, and he deals out for their comfort an ancient speech!

Sir, I trust Congress will find that it has the power. One thing I know; if it has the power to amnesty rebels it has the power to enfranchise colored fellow-citizens. The latter is much clearer than the former. I do not question the former; but I say to my excellent friend from Maine that the power to remove the disabilities of colored fellow-citizens is, if possible, stronger, clearer, and more assured than the other. Unquestionably it is a power of higher necessity and dignity. The power to do justice leaps forth from every clause of the Constitution; it springs from every word of its text; it is the inspiration of its whole chartered being.

Mr. President, I did not intend to say so much. I rose to-day merely to enable the absent to speak, that colored fellow-citizens, whose own Senators had failed them, might be heard through their written word. I did not intend to add anything of my own, but the subject is to me of such incalculable interest, and its right settlement is so essential to the peace of this country, to its good name, to the reconciliation we all seek, that I could not resist the temptation of making this further appeal.

February 1st.—Mr. CARPENTER, of Wisconsin, in an elaborate speech, replied to Mr. SUMNER, and criticised his bill, especially so far as it secured equal rights in churches and juries.

February 5th.—In pursuance of the opposition announced in his speech, Mr. CARPENTER moved another bill as a substitute for Mr. SUMNER'S; Mr. NORWOOD, of Georgia, sustained the substitute. Mr. WILSON, of Massachusetts, Mr. FRELINGHUYSEN, of New Jersey, and Mr. MORTON, of Indiana, predicated the earlier proposition. Mr. SUMNER then replied to Mr. CARPENTER.

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Therefore, sir, I am not without precedent when I bring foward an important measure and ask your votes, even though it have not the sanction of this important committee. I wish it had their sanction; but I do not hesitate to say that this bill is more important to the Judiciary Committee than that committee is important to the bill. In this matter the committee will suffer most. A measure like this, which links with the National Constitution and with the Declaration of Independence, if the Senator from Wisconsin will pardon me———

Mr. CARPENTER. I rise to ask why that inquiry is made of me. Have I criticised allusions to the Declaration of Independence?

Mr. SUMNER. I feared the Senator would not allow allusion to the Declaration except as a "revolutionary" document. I say this measure, linked as it is with the great title-deeds of our country, merits the support not only of the Judicary Committee, but of this Chamber. The Senate cannot afford to reject it.

Sir, I am weak and humble; but I know that when I present this measure and plead for its adoption, I am strong, because I have behind me infinite justice and the wrongs of an oppressed race. The measure is not hasty. It has been carefully considered already in this Chamber, much considered elsewhere, considered by lawyers, by politicians, ay, sir, and considered by our colored fellow-citizens whose rights it vindicates. But at the eleventh hour the Senator comes forward with a substitute which is to a certain extent an emasculated synonym of the original measure, seeming to be like and yet not like, feeble where the original is strong, incomplete where the original is complete, petty where the original is ample, and without machinery for its enforcement, while the original is well-supplied and most effective.

That you may understand the amendment introduced by me, I call attention to the original civil rights act out of which it grows and to which it is a supplement. That great statute was passed April 9, 1866, and is entitled "An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication." It begins by declaring who are citizens of the United States, and then proceeds:

"Such citizens of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right in every State and Territory in the United States"—

To do what?

"to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal properity, and to full and equal benefit of all laws and proceedings for the security of person and property as is en-

joyed by white citizens, and shall be subjected to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

The Senate will perceive that this act operates not only in the National but in the State jurisdiction. No person will question that. It operates in every National court and in every State court. The language is, "in every State and Territory in the United States." Every State court is opened. Persons without distinction of color are entitled to sue and be sued, especially to be heard as witnesses, and the colored man may hold up his hand as the white man. * *

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Now I ask the Senator from Wisconsin to consider what is the difference in character between the right to testify and the right to sit on a jury?

Mr. CARPENTER. Or on the bench.

Mr. SUMNER The Senator will allow me to put the question in my own way. I say nothing about the bench, and the Senator is too good a lawyer not to see why. He knows well the history of trial by jury; he knows that at the beginning jurors were witnesses from the neighborhood, afterward becoming judges, not of law, but of fact. They were originally witnesses from the vicinage, so that if you go back to the very cradle of our jurisprudence you find jurors nothing but witnesses, and now I insist that they must come under the same rule as witnesses. If the courts are opened to colored witnesses, I insist by the same title they must be opened to colored jurors. Call the right political or civil, according to the distinction of the Senator. No matter. The right to be a juror is identical in character with the right to be a witness. I know not if it be political or civil; it is enough for me that it is a right to be guarded by the nation. I say nothing about judges, for the distinction is obvious between the two cases. I speak now of colored jurors, and I submit as beyond all question that every reason or argument which opens the courts to colored witnesses must open them to colored jurors. The two go together as natural yokefellows.

But do not, sir, forget the necessity of the case. How can justice be administered throughout States thronging with colored fellow-citizens unless you have them on the juries? Denying to colored fellow-citizens their place on the juries, you actually deny them justice. This is plain, and presents a case of startling wrong. I am in the receipt of letters almost daily, complaining of the impossibility of obtaining justice in State courts because colored fellow-citizens are excluded from juries. I say, therefore, from the necessity of the case and also from the analogy of witnesses, the courts should be opened to colored jurors. The Senator makes a mistake when he deals his blow in the very temple of justice. He strikes down the safeguards of justice for the whole colored race; and what is the excuse? That to sit on the jury is a question of politics, that it is a political right and not a civil right. Sir, I cannot bring myself

to make any question whether it is a civil right or a political right; it is a right. It is a right which those men have by the law of nature and by the National Constitution, interpreted by the National Declaration.

But, sir, not content with striking at the colored race even in the very temple of justice, the Senator, finding an apology in the Constitution, insists upon the very exclusion from churches which the famous Petroleum V. Nasby had set up before. From juries I now come to churches. The Senator is not original; he copies, as I shall show, from a typical Democrat, who flourished during the war. But before I come to his prototype, let us consider the constitutional question presented by the Senator with so much gravity, without even the smile that plays so readily on his countenance. He seemed in earnest when he read these words of the national Constitution:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

And still without a smile he argued that the application of the great political principles of the Declaration and of the recent constitutional amendments to a church organization incorporated by law was a violation of this provision, and he adduced the work of the much venerated friend of my early life, and my master, the late Judge Story, expounding that provision. I do not know if the Senator read these words from the commentary of that great jurist:

"The real object of the amendment was not to countenance, much less to advance Mahometanism, or Judaism, or infidelity, by prostrating Christianity; but to exclude all rivalry among Christian sects"—

Observe, sir, what it is—

"but to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment, which should give to a hierarchy the exclusive patronage of the national Government."

How plain and simple! The real object was to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment. Such was the real object.

But the Senator says if Congress decrees that the Declaration of Independence in its fundamental principles is applicable to a church organization incorporated by State or national authority, we violate this provision of the Constitution! You heard him, sir; I do no injustice to his argument.

Our authority, Judge Story, continues in another place:

"It was under a solemn consciousness of the dangers from ecclesiastical ambition, the bigotry of spiritual pride, and the intolerance of sects, thus exemplified in our domestic as well as in foreign annals, that it was deemed advisable to exclude from the national Government all power to act upon the subject."

To act upon what? The subject of a religious establishment. No pretense here of denying to Congress the establishment of police

regulations, if you please, or the enforcement by law of the fundamental principles of the Declaration of Independence. There is nothing in this text inconsistent with such a law. The Constitution forbids all interference with religion. It does not forbid all effort to carry out the primal principles of republican institutions. Now, sir, here is no interference with religion. I challenge the Senator to show it. There is simply the assertion of a political rule, or, if you please, a rule of political conduct. Why, sir, suppose the manners and morals which prevailed in Virginia during the early life of Mr. Jefferson, and recently revealed by the vivid pen of one of our best writers should find a home in the churches of Washington. You have read Mr. Parton's account, that very often the clergyman reeled from the door to the pulpit; he reeled with intoxication while pronouncing the benediction, sometimes at the funeral service, sometimes at the marriage service. You find the narrative in a late number of the *Atlantic Magazine*. Suppose Congress, taking into consideration the peculiar circumstances of such misconduct, should give expression to public sentiment and impose a penalty for such intemperance here under our very eyes, would that be setting up an established church? Would that be a violation of the national Constitution, in the provision which the Senator invokes "Congress shall make no law respecting an establishment of religion?" And yet in the case I suppose, Congress would enter the churches; it might be only in the District of Columbia; but the case shows how untenable is the position of the Senator, according to which the effort of Congress to preserve churches from the desecration of intemperance would be kindred to setting up an established religion. There is a desecration as bad as intemperance, which I now oppose. I introduce the case of intemperance only as an illustration.

And now, sir, I come to the question. Suppose Congress declares that no person shall be excluded from any church on account of race, color, or previous condition, where is the interference with the constitutional provision? Is that setting up a church establishment? Oh! no, sir. It is simply setting up the Declaration of Independence in its primal truths, and applying them to churches as to other institutions.

Mr. CARPENTER. Will my friend allow me, not for the purpose of interrupting him, but to come to the point? Suppose Congress should pass a law that in no church in this country should the Host be exalted during divine service?

Mr. SUMNER. The Senator knows well the difference. This is a religious observance.

Congress cannot interfere with any religious observance. Congress can do nothing to set up a religious establishment. It can make no law respecting an establishment of religion. But the Senator must see that in the case he puts the proposed law would be the very thing prohibited by the Constitution. I thank him for that

instance. I propose no interference with any religious observance. Not in the least. Far from it.

Sir, the case is clear as day. All that I ask is that, in harmony with the Declaration of Independence, there be complete equality before the law everywhere, in the inn, on the highway, in the common school, in the church, on juries; ay, sir, and in the last resting-place on earth. The Senator steps forward and says "No; I cannot accept equality in the church; there the Constitutional amendments interpreted by the Declaration are powerless; there a white man's Government shall prevail; a church organization may be incorporated by national or State authority, and yet allowed to insult brothers of the human family on account of the skin. In the church this outrage may be perpetrated; because to forbid it would interfere with religion and set up an establishment."

Such, sir, is the argument of the Senator, and he makes it in the name of religious liberty! Good God, sir! Religious liberty! The liberty to insult a fellow-man on account of his skin! You listened to his eloquent, fervid appeal. I felt its eloquence, but regretted that such power was employed in such a cause.

I said that, consciously or unconsciously, he had copied Petroleum V. Nasby, in the letter of that renowned character entitled "Goes on with his church," from which I read a brief passage:

"CHURCH OF ST. VALLANDIGUM,
"*June the* 10*th*, 1863.

"We hed a blessed and improvin time yesterday. My little flock staggered in at the usual hour in the mornin, every man in a heavenly frame uv mind, hevin been ingaged all nite in a work uv mercy, to wit, a mobbin uv two enrollin officers. One uv em resisted, and they smote him hip and thigh, even ez Bohash smote Jaheel. (Skriptooral, wich is nessary, bein in the ministry.) He wuz left for dead.

"We opened servis by singin a hym, wich I writ, commencin as follows;

"Shel niggers black this land possess,
And mix with us up here?
Oh, no, my friends; we raythor guess
We'll never stand that 'ere."

[Laughter.]

I ask if that is not the Senator's speech. [Laughter.] I know not whether it is necessary for me to go further. Something more I might say. Very well, I will; the Senator rather invites me.

The Senator becomes here the representative of caste; and where, sir? In a Christian church; and while espousing that cause he pleads the national Constitution. Now, sir, I have to repeat—and here I am determined not to be misunderstood—we have no right to enter the church and interfere in any way with its religious ordinances, as with the raising of the Host; but when a church organization asks the benefit of the law by an act of incorporation, it must submit to the great primal law of the Union—the Constitution of the United States, interpreted by the Declaration of Independence. The Senator smiles again; I shall come to that by and by. Whenever a church organization seeks incorporation, it must submit to

the great political law of the land. It can have the aid it seeks only by submitting to this political law. Here is nothing of religion—it is the political law, the law of justice, the law of equal rights. The Senator says no; they may do as they please in churches because they are churches, because they are homes of religion, of Christianity; there they may insult on account of the skin. I call that a vindication of caste, and caste in one of its most offensive forms. You all know, sir, the history of caste. It is the distinction of which we first have conspicuous record in the East, though it has prevailed more or less in all countries; but it is in the East that it showed itself in such forms as to constitute the type by which we describe the abuse. It is an offensive difference between persons founded on birth, not unlike that maintained among us on account of a skin received from birth.

And now pardon me if I call attention to the way in which this discrimination has been characterized by the most eminent persons familiar with it. I begin with the words of an estimable character known in religion and also in poetry—Bishop Heber, of Calcutta, who pictured caste in these forcible terms:

"It is a system which tends, more than any else the devil has yet invented, to destroy the feelings of general benevolence, and to make nine tenths of mankind the hopeless slaves of the remainder."

Then comes the testimony of Rev. Mr. Rhenius, a zealous and successful missionary in the East:

"I have found caste, both in theory and practice, to be diametrically opposed to the gospel, which inculcates love, humility, and union; whereas caste teaches the contrary. It is a fact, in those entire congregations where caste is allowed the spirit of the gospel does not enter; whereas in those from which it is excluded we see the fruits of the gospel spirit."

Mr. CARPENTER. Will the Senator allow me to interrupt him to ask whether these commentaries are read for the purpose of construing the Constitution of the United States? That is the only point of difference between us.

Mr. SUMNER. The Senator will learn before I am through. I shall apply them.

After quoting other authorities Mr. SUMNER proceeded:

These witnesses are strong and unimpeachable. In caste government is nurturing a tremendous evil, a noxious plant by the side of which the graces cannot flourish, part and parcel of idolatry, a system which, more than anything else the devil has yet invented, tends to destroy the feelings of general benevolence. Such is caste, odious, impious, accursed, wherever it shows itself.

Now, sir, I am ready to answer the inquiry of the Senator, whether I read these as an interpretation of the Constitution of the United States. Not precisely; but I do read them to exhibit the outrage which seems to find a vindicator in the Senator from Wisconsin, in this respect, at least, that he can look at the National Constitution, interpreted by the National Declaration, proclaiming

the equal rights of all, and find no word empowering Congress to provide that in churches organized by law this hideous outrage shall cease. I think I do no injustice to the Senator. He finds no power. He tells us that if we exercise this power we shall have an established church, and he invokes the National Constitution. Sir, I, too, invoke the National Constitution; not in one solitary provision, as the Senator does, but from its preamble to its last amendment, and I invoke the Declaration of Independence. The Senator may smile. I know how he treats that great charter. I know how in other days he has treated it. But, sir, the Declaration survives. It has been trifled with, derided, insulted often on this floor, but it is more triumphant now than ever. Its primal truths, announced as self-evident, are more commanding and more beaming now than when first uttered. They are like the sun in the heavens, with light and warmth.

* * * * * * * *

Sir, is not the Senator answered? Is not the distinction clear as noonday between what is prohibited by the Constitution and what is proposed by my amendment? The difference between the two is as wide as between the sky and the earth. They cannot be mingled. There is no likeness, similitude, or anything by which they can be brought together. The Senator opposes a religious amendment. I assert that there shall be no political distinction, and that is my answer to his argument on churches.

And now, sir, may I say, in no unkindness, and not even in criticism, but simply according to the exigencies of this debate, that the Senator from Wisconsin has erred? If you will listen, I think you will see the origin of his error. I do not introduce it here, nor should I refer to it if he had not introduced it himself. The Senator has never had an adequate idea of the great Declaration. The Senator smiles. I have been in this Chamber long enough to witness the vicissitudes of opinion on our Magna Charta. I have seen it derided by others more than it ever was by the Senator from Wisconsin.

Mr. CARPENTER. I should like to ask the Senator from Massachusetts when he ever heard me deride it?

Mr. SUMNER. The Senator will pardon me; I am coming to that. The Senator shall know. The person who first in this Chamber opened assault upon the Declaration was John C. Calhoun, in his speech on the Oregon bill, June 27, 1848. He denounced the claim of equality as "the most false and dangerous of all political errors;" and he proceeded to say that it "has done more to retard the cause of liberty and civilization, and is doing more at present, than all other causes combined." He then added that, "for a long time it lay dormant, but in process of time it began to germinate and produce its poisonous fruits." These poisonous fruits being that public sentiment against slavery which was beginning to make itself felt.

This extravagance naturally found echo from his followers. Mr. Pettit, a Senator from Indiana, after quoting "we hold these truths to be self-evident, that all men are created equal," proceeded:

"I hold it to be a self-evident lie. There is no such thing. Sir, tell me that the imbecile, the deformed, the weak, the blurred intellect in man is my equal, physically, mentally, or morally, and you tell me a lie. Tell me, sir, that the slave in the South, who is born a slave; and with but little over one-half the volume of brain attaches to the northern European race is his equal, and you tell what is physically a falsehood. There is no truth in it at all."

This was in the Senate, February 20, 1854. Of course it proceeded on a wretched misconstruction of the Declaration, which announced equality of rights and not any other equality, physical, intellectual, or moral. It was a declaration of rights; nor more nor less.

Then, in the order of impeachment followed a remarkable utterance from a much valued friend of my own and of the Senator, the late Rufus Choate, who, without descending into the same particularity, seems to have reached a similar conclusion, when, in addressing political associates, he characterized the Declaration of Independence as "that passionate and eloquent manifesto of a revolutionary war," and then again spoke of its self-evident truths as "the glittering and sounding generalities of natural right." This was in his letter to the Maine Whig State Central Committee, August 9, 1856. In my friendship for this remarkable orator, I can never think of these too famous words without a pang of regret.

This great question became a hinge in the memorable debate between Mr. Douglas and Mr. Lincoln in the contest for the Senatorship of Illinois, when the former said, in various forms of speech, that "the Declaration of Independence only included the white people of the United States;" and Abraham Lincoln replied that "the entire records of the world, from the date of the Declaration of Independence up to within three years ago, may be searched in vain for one single affirmation, from one single man, that the negro was not included in the Declaration." This was in Mr. Lincoln's speech at Galesburg, October 7, 1858. Elsewhere he repeated the same sentiment.

Andrew Johnson renewed the assault. After quoting the great words of the Declaration he said in this Chamber, December 12, 1859:

"Is there an intelligent man throughout the whole country, is there a Senator, when he has stripped himself of all party prejudice, who will come forward and say that he believes that Mr. Jefferson, when he penned that paragraph of the Declaration of Independence, intended it to embrace the African population? Is there a gentleman in the Senate who believes any such thing?" * * * "There is not a man of respectable intelligence who will hazard his reputation upon such an assertion."

All this is characteristic of the author, as afterward revealed to us.

Then, sir, in the list we skip to April 5, 1870, when the Senator from Wisconsin ranges himself in the line characterizing the great truths of the Declaration as "the generalities of that revolutionary

pronunciamento." In reply to myself he rebuked me and said that it was my disposition, if I could not find a thing in the Constitution, to seek it in the Declaration, and if it were not embodied in the generalities of that revolutionary pronunciamento, then to go still further.

I present this exposition with infinite reluctance, but the Senator makes it necessary. In his speech the other day, he undertook to state himself anew with regard to the Declaration. He complained of me because I made the National Constitution and the National Declaration coequal, and declared that if preference be given to one it must be to the Declaration. To that he replied:

"Now, the true theory is plain"—

Mr. President. you are to have the "true theory" on this important question—

"If the Senator from Massachusetts says that in doubtful cases it is the duty of a court or the duty of the Senate or the duty of any public officer to consider the Declaration of Independence, he is right. So he must consider the whole history of this country; he must consider the history of the colonies, the Articles of Confederation, all anterior history. That is a principle of municipal law. A contract entered into between two individuals, in the language of the cases, must be read in the light of the circumstances that surround the parties who made it. Certainly the Constitution of the United States must be construed upon the same principle; and when we are considering a doubtful question, the whole former history of the country, the Declaration of Independeuce, the writings of Washington and of Jefferson and of Madison, the writings in the Federalist—everything that pertained to that day and gives color and tone to the Constitution must be considered."

Plainly, here is improvement. There is no derision. The truths of the Declaration are no longer "the generalities of that revolutionary pronunciamento."

Mr. CARPENTER. Oh, yes, it is; I stand by that.

Mr. SUMNER. The Senator stands by that. Very well.

Mr. CARPENTER. I glory in it. I glory in all the history of that revolutionary period; our revolutionary fathers, our revolutionary war. It is the Revolution that I make my stand upon.

Mr. SUMNER. Then, as the Senator from Vermont [Mr. Edmunds] remarks, the Senator should give some effect to what he glories in. I hope he will not take it all out in glory, but will see that a little of it is transfused into human rights.

Mr. CARPENTER. All that is consistent with the express provisions of the Constitution.

Mr. SUMNER. I shall come to that. The point is that the Senator treats the Declaration of Independence as no better than the writings of Washington, of Jefferson, of Madison, the Federalist, and everything that pertains to that day. It is only part and parcel of contemporary history, of no special consequence, no binding character, not supreme, but only one of the authorities, or at least one of the witnesses by which we are to read the Constitution. Sir, is it so regarded by Congress, or at least is it so regarded by the

committee of this body under whose direction is printed what is known familiarly as the "Constitution, Rules, and Manual?" Here is the little volume to which we daily turn. I find that the first document is the National Declaration, preceding the National Constitution. Sir, it precedes the Constitution in time as it is more elevated in character. The Constitution is a machine, great, mighty, beneficent. The Declaration supplies the principles giving character and object to the machine. The Constitution is an earthly body, if you please; the Declaration is the soul. The powers under the Constitution are no more than the hand to the body; the Declaration is the very soul itself. But the Senator does not see it so. He sees it as no better than a letter of Jefferson or Madison, or as some other contemporary incident which may help us in finding the meaning of the Constitution. The Senator will not find many ready to place themselves in the isolation he adopts. It was not so regarded by the historian who has described it with more power and brilliancy than any other, Mr. Bancroft. After setting forth what it contained, he presents it as a new and lofty Bill of Rights:

"This immortal State paper, which for its composer was the aurora of enduring fame, was the genuine effusion of the soul of the country at that time, the revelation of its mind, when in its youth, its enthusiasm, its sublime confronting of danger, it rose to the highest creative powers of which man is capable. *The bill of rights which it promulgates* is of rights that are older than human institutions, and spring from the eternal justice that is anterior to the State."

The vivid presentment of this State paper, in its commanding character, like an ordinance for mankind, above all other contemporary things, shows its association with our great national anniversary.

"The nation, when it made the choice of a day for its great anniversary, selected not the day of the resolution of independence, when it closed the past, but that of the declaration of principles on which it opened its new career."

Shall I remind you, sir, of that famous letter by John Adams to his wife written on the historic day? He tells her in words quoted with annual pride, that this day forevermore will be celebrated with rejoicings of all kinds, with the ringing of bells in the morning, with the firing of cannon, with orations, and every expression of satisfaction and gratitude. And yet this Declaration annually celebrated, having the first pages of our statute-book, placed in the forefront of the volume of rules for our guidance in this Chamber, this triumphant Magna Charta is to be treated as "the generalities of a revolutionary pronunciamento," or at best as of no more value than the letter of a contemporary statesman. Sir, the Senator misconceives the case, and there, allow me to say, is his error.

Mr. CARPENTER. The Senator understood me to say, at least I said, in construing the Constitution you must undoubtedly look to the Declaration of Independence as you must look to all the contemporary history of that day. Did I say there was no difference in the different documents? Did I say that no more importance

was to be attached to the Declaration of Independence than to a letter of Madison or Washington? No, sir, I said no such thing.

Mr. SUMNER. The Senator shall speak for himself. He has spoken now, and you shall hear what he said before:

"Certainly the Constitution of the United States must be construed upon the same principle."

That is, as a contract entered into between two individuals.

"And when we are considering"—

What?—

"a doubtful question, the whole former history of the country, the Declaration of Independence, the writings of Washington and of Jefferson and of Madison, the writings in the Federalist, everything that pertained to that day and gives color and tone to the Constitution must be considered."

I am happy in any word of respect for the Declaration,—because the claim of equal rights stands on the Constitution interpreted by the Declaration.

This brings me again to the main question. We have the national Constitution from the preamble to the signature of George Washington, and then we have the recent amendments, all to be interpreted by the national Declaration, which proclaims, as with trumpet:

"We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness."

Unquestionably the Constitution supplies the machinery by which these great rights are maintained. I say it supplies the machinery but I insist against the Senator, and against all others, that every word in the Constitution must be interpreted by these primal, self-evident truths; not merely in a case that is doubtful, as the Senator says, but constantly and always, so that the two shall perpetually go together, as the complement of each other; but the Declaration has a supremacy grander than that of the Constitution, more sacred and inviolable, for it gives the law to the Constitution itself. Every word in the Constitution is subordinate to the Declaration.

Before the war, when slavery prevailed, the rule was otherwise naturally, but, as I have already said, the grandest victory of the war was the establishment of the new rule by which the Declaration became supreme as interpreter of the Constitution. Take, therefore, any phrase in the Constitution, take any power, and you are to bring it all in subordination to those supreme primal truths. Every power is but the agent by which they are maintained; and when you come to those several specific powers abolishing slavery, defining citizenship, securing citizens in their privileges and immunities, guarding them against any denial of the equal protection of the laws, and then again securing them the right to vote, every one of these safeguards must be interpreted so as best to maintain equal rights. Such I assert to be constitutional law.

Sir, I cannot see it otherwise. I cannot see this mighty Magna Charta degraded to the level of a casual letter or an item of history. Why, sir, it is the baptismal vow of the Republic; it is the pledge which our fathers took upon their lips when they asked the fellowship of mankind as a free and independent nation. It is loftier than the Constitution, which is a convenience only, while this is a guide. Let no one smile when it is invoked. Our fathers did not smile on the great day. It was with them an earnest word opening the way to victory and to that welcome in the human family with which our nation has been blest. Without these words what would have been the national Declaration? How small! Simply a dissolution of the tie between the colonies and the mother country; a cutting of the cord; that is all. Ah! it was something grander, nobler. It was the promulgation of primal truths not only for the good of our own people, but for the good of all mankind. Such truths can never die. It is for us to see that they are recognized without delay in the administration of our own Government.

Mr. CARPENTER, replied at some length. Mr. SUMNER followed:

The Senator insists that I am willing to disregard the Constitution. On what ground can the Senator make any such assertion? Does he suppose that his oath is stronger with him than mine with me?

Mr. CARPENTER. Will the Senator allow me to answer him?

Mr. SUMNER. Certainly.

Mr. CARPENTER. I assume that for the reason that when we come here to discuss a constitutional question, the power of Congress to do a certain thing, the Senator flies from the Constitution and goes to the Declaration of Independence, and says that is the source of power.

Mr. SUMNER. The Senator ought to know very well that I have never said any such thing. The Senator proclaims that I fly from the Constitution to the Declaration, which I insist is the source of power. I now yield the floor again, and ask the Senator when I said what he asserts.

Mr. CARPENTER. The Senator said that the Declaration was co-ordinate in authority with the Constitution. What did he mean by that? I supposed he used the word in the ordinary acceptation, and if he did, he meant to say that the Declaration was a co-ordinate grant of power.

Mr. SUMNER. Just the contrary Mr. President. Senators will bear me witness. I appeal to you all. I said just the contrary. Repeatedly I said that in my judgment the Declaration of Independence was not a grant of power, but co-equal with the Constitution, the one being a grant of power, and the other a sovereign rule of interpretation. That is what I said; and now the Senator, in the face of my positive words, not heeding them at all, although they are found in the Globe, vindicates himself by putting in my mouth what I never said or suggested, and then proceeds to announce somewhat grandly that I set the Constitution at naught. I challenge the Senator again to point out one word that has ever fallen from my lips during my service in this Chamber to sustain him in his assertion. I ask him to do it. He cannot. But why this imputation? Is the oath we have all taken at that desk binding only on him? Does he assume that he has a monopoly of its obligations; that other Senators took it with levity, ready to disregard it, or at least that I have taken it so? Such is the assumption; at least it is his assumption with regard to me.

Now, I tell the Senator, and I beg him to understand it for the future, that I shall not allow him to elevate himself above me in any loyalty to the Constitution. Willingly do I yield to the Senator in all he can justly claim of regard and honor. But I do not concede precedence in that service where if he does not magnify himself he degrades me.

I have served the National Constitution longer than he has, and with such fidelity as I could command. I have served it at moments of peril, when the great principles of liberty to which I have been devoted were in jeopardy; I have served it when there were few to stand together. In upholding this Constitution never did I fail at the same time to uphold human rights. That was my supreme object; that was the ardent aspiration of my soul. Sir, I know how often I have failed,—too often; but I know that I never did fail in devotion to the Constitution for the true interpretation of which I now plead. The Senator speaks without authority, and he must pardon me if I say, with levity, when he makes such an allegation against one whose record for the past twenty years in this Chamber is ready to answer him. I challenge him to point out one word ever uttered by me to justify his assault. He cannot do it. He makes his onslaught absolutely without one tittle of evidence.

Sir, I have taken the oath to support the Constitution, but it is that Constitution, as I understand it. In other days, when this Chamber was filled with intolerant slave-masters, I was told that I did not support the Constitution, as I have been told to-day by the Senator, and I was reminded of my oath. In reply I borrowed the language of Andrew Jackson, and announced that, often as I had taken that oath, I had taken it always to support the Constitution as I understand it; and it is so now. I have not taken an oath to support the Constitution as the Senator from Wisconsin understands it, without its animating soul. Sir, my oath was to support the National Constitution as interpreted by the National Declaration. The oath of the Senator from Wisconsin was different; and there, sir, is the precise divergence between us. He swore, but on his conscience was a soulless text. I am glad that my conscience felt that there was something more.

The Senator must hesitate before he assaults me again for any failure in devotion to the Constitution. I put my life against the life of the Senator; I put my little service, humble as it is, against the service of the Senator; I put every word uttered by me in this Chamber or elsewhere against all that has been said by the Senator; and the world shall pronounce between us on the question he has raised. If I have inclined in favor of human rights; if I have at all times insisted that the National Constitution shall be interpreted always so that human rights shall find the greatest favor, I have committed no error. In the judgment of the Senator, I may have erred, but I know that in the judgment of the American people I have not erred; and here I put myself upon the country to be tried.

Sir, on that issue I invoke the sentiments of mankind and posterity when all of us have passed away. I know that it will be then written that the National Constitution is the Charter of a mighty Republic dedicated to Human Rights, dedicated at its very birth by the great Declaration, and that whoever fails to enlarge and ennoble

it by the interpretation, through which human rights are most advanced, will fail in his oath to support the Constitution; aye, sir, fail in his oath!

The debate was continued successive days; Mr. THURMAN, of Ohio; Mr. FERRY, of Connecticut; Mr. CORBETT and Mr. KELLY, both of Oregon; Mr. HILL of Georgia; Mr. STEVENSON, of Kentucky, and Mr. TIPTON, of Nebraska, speaking against Mr. SUMNER's bill. Mr. HARLAN in favor of, and Mr. FRELINGHUYSEN declared his support if Mr. SUMNER would modify its provisions as to "churches."

The substitute of Mr. CARPENTER was rejected—yeas, 25; nays, 34. A motion of Mr. FRELINGHUSEN to make the bill inapplicable to "churches" was carried—yeas, 29; nays, 24. The next question was on a motion of Mr. CARPENTER to strike out the clause relating to "juries." This was earnestly debated by Mr. EDWARDS, of Vermont, before the vote was taken. Mr. SUMNER remarked:

There is a famous saying that comes to us from the last century, that the whole object of government in England, of king, lords, and commons, is to bring twelve men into a jury-box. Sir, that is the whole object of government not only in England but in every other country where law is administered through popular institutions; and especially is it the object of government here in the United States; and the clause in this bill which it is now proposed to strike out is simply to maintain that great principle of popular institutions.

This amendment was rejected—yeas, 12; nays, 42. Other amendments were made and rejected.

The question was then taken on Mr. SUMNER's bill as an amendment to the amnesty bill, and it was adopted by the casting vote of Vice President COLFAX—yeas, 28; nays, 28; as follows:

YEAS—Messrs. Ames, Anthony, Brownlow, Cameron, Chandler, Clayton, Conkling, Cragin, Fenton, Ferry of Michigan, Frelinghuysen, Gilbert, Hamlin, Harlan, Morrill of Vermont, Morton, Osborn, Patterson, Pomeroy, Ramsey, Rice, Sherman, Spencer, Sumner, West, Wilson, Windom, and Wright—28.

NAYS—Messrs. Blair, Boreman, Carpenter, Cole, Corbett, Davis of West Virginia, Ferry of Connecticut, Goldthwaite, Hamilton of Texas, Hill, Hitchcock, Johnston, Kelly, Logan, Morrill of Maine, Norwood, Pool, Robertson, Sanlsbury, Sawyer, Schurz, Scott, Stevenson, Stockton, Thurman, Tipton, Trumbull, and Vickers—28.

ABSENT—Messrs. Alcorn, Bayard, Buckingham, Caldwell, Casserly, Cooper, Davis of Kentucky, Edmunds, Flanagan, Hamilton of Maryland, Howe, Kellogg, Lewis, Nye, Pratt, Sprague, and Stewart—17.

The announcement of the adoption of the amendment was received with great applause in the galleries.

Mr. SUMNER then declared his purpose to vote for the amnesty bill as amended; that the bill was now elevated and consecrated, and that whoever voted against it must take the responsibility of opposing a great measure for the assurance of equal rights.

The question was then taken on the passage of the bill as amended, when it was rejected —yeas 33, nays 19—two-thirds not voting in the affirmative. Democrats opposed to the Civil Rights Bill voted against Amnesty with this association.

The attention of the Senate was at once occupied by other business, so that Amnesty and Civil Rights were for the time superseded.

May 8th.—Another Amnesty Bill, which had passed the House, being under consideration, Mr. Sumner moved to strike out all after the enacting clause and insert the Civil Rights Bill. Mr. Ferry, of Connecticut, promptly objected that the amendment was not in order, but Vice-President Colfax overruled the point, and was sustained by the Senate. Mr. Ferry then moved to strike out of Mr. Sumner's bill the words applicable to "Common schools and other public institutions of learning," which was rejected—yeas 25, nays 26. Mr. Blair, of Missouri, then moved that every city, county, or State should "decide the question of mixed or separate schools," and this was rejected—yeas 23, nays 30. Mr. Carpenter moved to strike out the section relating to "juries" and this was rejected—yeas 16, nays 33. A motion by Mr. Trumbull, of Illinois, to strike out the first five sections of Mr. Sumner's bill was lost—yeas 29, nays 29, by the casting vote of Vice-President Colfax, amidst manifestations of applause in the galleries. The question was then taken on the motion to substitute the Civil Rights Bill for the Amnesty Bill, and it was lost—yeas 27, nays 28. Mr. Sumner at once moved the Civil Rights Bill as an addition, and this amendment was adopted—yeas 28, nays 28, by the casting vote of Vice-President Colfax, The amendment as in Committee of the Whole was then concurred in by the Senate—yeas 27, nays 25. On the passage of the bill thus ameuded, the vote stood—yeas 32, nays 22, so that two-thirds not voting in the affirmative the bill was rejected.

Again there was a lull in the two measures.

May 10. Mr. Sumner introduced another Supplementary Civil Rights Bill, being his original bill with such verbal changes and emendations as had occurred during its protracted consideration, and the bill was placed on the calendar of the Senate without reference to a committee.

May 21. The Senate having under consideration a bill to extend the provisions of the Enforcement Act in the Southern States, known as the Ku Klux Act, and entering upon a "night session," in order to pass the bill, Mr. Sumner, who was an invalid, contrary to his habit, left the chamber. In the early morning the bill was passed, when the Senate, on motion of Mr. Carpenter, of Wisconsin, took up Mr. Sumner's Civil Rights Bill and, striking out all after the enacting clause, inserted a substitute, imperfect in machinery, and with no allusion to schools, institutions of learning, churches, cemeteries, juries, or the word "white." The bill thus changed passed the Senate in Mr. Sumner's absence. Meanwhile Mr. Spencer, of Alabama, moved an adjournment, saying: "It is unfair and unjust to take a vote upon this bill during the absence of the Senator from Massachusetts. I insist on the motion to adjourn as the Senator from Massachusetts is not here." The motion was rejected. A messenger from the Senate informed Mr. Sumner of the effort making, and he hurried to the chamber, but the bill had been already acted on. Meanwhile another Amnesty Bill on the calendar was taken up, on motion of Mr. Robertson, of South Carolina, and pressed to a final vote. Mr. Sumner arrived in season to protest against this measure unless associated with equal rights. At the first opportunity after reaching his seat, he said:

Mr. SUMNER. Mr. President, I understand that in my absence, and without any notice to me from any quarter, the Senate have adopted an emasculated civil rights bill, with at least two essential safeguards wanting, one concerning the common schools and the other concerning juries. The original bill contains both and more,

and I now ask the Senate most solemnly to consider whether, while decreeing equal rights for all in the land, they will say that those equal rights shall not prevail in the common school and in the jury. Such, I understand to have been the vote of the Senate. What will ensue should it be confirmed by the other House? The spirit of caste will receive new sanction in the education of children; justice will find a new impediment in the jury. Sir, I plead for the colored race, who unhappily have no representative on this floor.

I ask the Senate to set its face against the spirit of caste now prevailing in the common schools, against the injustice now installed in the jury. I insist that the Senate shall not lose this great opportunity. You recognize the commanding principle of the bill. Why not, then, apply it throughout, so that hereafter there shall be no question; for, sir, be well assured there is but one way of settling this great cause, and that is by conceding these equal rights. So long as they are denied, you will have the colored people justly complaining and knocking at your doors, and may I say so long as I remain in this Chamber you will have me perpetually demanding their rights. I cannot, I will not cease. I ask, sir, that this terrible strife be brought to an end, and the cause settled forever. Now is the time. But this cannot be except by the establishment of equal rights absolutely and completely wherever the law can reach.

Sir, early in life I vowed myself to nothing less than the idea of making the principles and promises of the Declaration of Independence a living reality. This was my aspiration. For that I have labored; and now at this moment, as its fulfillment seems within reach, I appeal to my fellow-Senators that there shall be no failure on their part. Make, I entreat you, the Declaration of Independence in its principles and promises a living letter; make it a practical reality.

One word more. You are about to decree the removal of disabilities from those who have been in rebellion. Why will you not with better justice decree a similar removal of disabilities from those who have never injured you? Why will you not accord to the colored race the same amnesty you offer to former rebels? Sir, you cannot go before the country with this unequal measure. Therefore, sir, do I insist that amnesty shall not become a law unless at the same time the equal rights of all are secured. In debate this winter I have often said this, and I repeat it now with all the earnestness of my nature. Would I were stronger, that I might impress it upon the Senate!

A motion by Mr. SUMNER to append his bill was rejected—yeas 13, nays 27—and the question returned on the Amnesty Bill.

Mr. SUMNER then declared his purpose to vote against the Amnesty Bill.

Mr. President, I long to vote for amnesty; I have always hoped to vote for it; but, sir, I should be unworthy of my seat as a Senator if I voted for it while the colored race are shut out from their rights; and the ban of color is recognized in this Chamber. Sir, the time has not come for amnesty, how often must I repeat; be just to the colored race before you are generous to former rebels. Unwillingly I press this truth, but it belongs to the moment. I utter it with regret, for I long to record my name in behalf of amnesty. And now let it not go forth that I am against amnesty. I here declare from my seat that I am for amnesty, provided it can be associated with the equal rights of the colored race; but, if not so associated, then, so help me God, I am against it.

The amnesty bill was then passed, with only two dissenting votes, Mr. SUMNER, and Mr. NYE, of Nevada.

Mr. SUMNER then made an ineffectual effort to obtain a reconsideration of the votes just taken, so that on another day, in a full Senate, he could be heard. Here he said:

Mr. President, I had supposed that there was an understanding among the friends of civil rights that the bill for their security should be kept on a complete equality with that for amnesty, which could be only by awaiting a bill from the House securing civil rights precisely as we have a bill from the House securing amnesty. The two measures are not on an equality when the Senate takes up a House bill for amnesty and takes up simply a Senate bill for civil rights. I will not characterize the transaction; but to me it is painful, for it involves the sacrifice of the equal rights of the colored race, as is plain, very plain. All this winter I have stood guard here making an earnest though unsuccessful effort to secure those rights, insisting always that they should be recognized side by side with the rights of former rebels. Many Senators agreed with me, but now at the last moment comes the sacrifice. The amnesty bill, which has already prevailed in the House, passes, and only awaits the signature of the President; while an imperfect civil rights bill, shorn of its best proportions, which has never passed the House, is taken up and rushed through the Senate. Who can tell its chances in the other House? Such, sir, is the indifference with which the Senate treats the rights of an oppressed people!

Sir, I sound the cry. The rights of the colored race have been sacrificed in this Chamber where the Republican party has a large majority—that party by its history, its traditions, and all its professions bound to their vindication. Sir, I sound the cry. Let it go forth that the sacrifice has been perpetrated. Amnesty is adopted, but where are the equal rights of the colored race? Still afloat between the two Houses on an imperfect bill, and what is their chance? Pass the imperfect bill and still there is a denial of equal

rights. But what is the chance of passing even this imperfect measure? Who can say? Is it not a sham? Is it not a wrong which ought to ring through the land?

Sir, I call upon the colored people throughout the country to take notice how their rights are paltered with. I wish them to understand that here in this Chamber, with a large majority of Republicans, the sacrifice has been accomplished, and let them observe how. They will take note that amnesty has been secured while nothing is secured to them. Now, sir, would you have your work effective, you should delay amnesty until a bill for civil rights has passed the House, and reaching this Chamber the two measures will then be on a complete equality. Anything else is sacrifice of the colored race; anything else is abandonment of an imperative duty.

The Senate then adjourned at ten o'clock and twenty minutes on the morning of May 22d.

Nothing further occured on this interesting subject during the remainder of the session. The Amnesty bill became a law. The Civil Rights bill was not considered in the House, so that even this imperfect measure failed. At the next session of Congress Mr. Sumner was an invalid, under medical treatment and withdrawn from the Senate, so that he was unable to press his bill; nor did any other Senator move it.

December 1st 1873. On the first day of the session Mr. Sumner again brought forward his bill in the following terms;

A BILL

Supplementary to an act entitled "An act to protect all citizens of the United States in their civil rights, and to furnish the means for their vindication," passed April ninth, eighteen hundred and sixty-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no citizen of the United States shall, by reason of race, color, or previous condition of servitude, be excepted or excluded from the full enjoyment of any accommodation, advantage, facility, or privilege furnished by inn-keepers; by common carriers, whether on land or water; by licensed owners, managers, or lessees of theaters or other places of public amusement; by trustees, commissioners, superintendents, teachers, other officers of common schools and public institutions of learning, the same being supported by moneys derived from general taxation or authorized by law; also of cemetery associations and benevolent associations supported or authorized in the same way: *Provided*, that private schools, cemeteries and institutions of learning established exclusively for white or colored persons, and maintained respectively by voluntary contributions, shall remain according to the terms of their original establishment.

SEC. 2. That any person violating any of the provisions of the foregoing section, or aiding in their violation, or inciting thereto, shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action on the case, with full costs, and shall also, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year: *Provided*, That the party aggrieved shall not recover more than one penalty; and when the offense is a refusal of burial, the penalty may be recovered by the heirs-at-law of the person whose body has been refused burial.

SEC. 3. That the same jurisdiction and powers are hereby conferred and the same duties enjoined upon the courts and officers of the United States in the execution of this act as are conferred and enjoined upon such courts and officers in sections three, four, five, seven, and ten of an act entitled "An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication," passed April ninth, eighteen hundred and sixty-six, and these sections are hereby made a part of this act; and any of the aforesaid officers failing to institute and prosecute such proceedings herein required shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs, and shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not less than one thousand dollars nor more than five thousand dollars.

SEC. 4. That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as juror in any court, national or State, by reason of race, color, or previous condition of servitude; and any officer or other persons charged with any duty in the selection or summoning of jurors who shall fail to summon any citizen for the reason above named shall, on conviction thereof, be deemed guilty of a misdemeanor and be fined not less than one thousand dollars nor more than five thousand dollars.

SEC. 5. That every discrimination against any citizen on account of color by the use of the word "white," or any other term in law, statute, ordinance, or regulation, national or State, is hereby repealed and annulled.

On the re-introduction of this bill, the original clause relating to "churches," was omitted in order to keep it in substantial harmony with the votes of the Senate. Undoubtedly the bill should embrace "churches"